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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, September 16, 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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# Presidential Documents

**Title 3—**

## The President

**Executive Order 13471 of August 28, 2008**

## Further Amendments To Executive Order 13285, President's Council On Service And Civic Participation

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to increase the membership and extend the duration of the President's Council on Service and Civic Participation, it is hereby ordered that Executive Order 13285 of January 29, 2003, as amended, is further amended as follows:

**Section 1.** Section 1 is amended by adding at the end of section 1 the following new subsection: ''(c) To conduct and vote on official business during meetings, the Council must convene a quorum of at least 10 Council members.''

**Sec. 2.** Section 4(b) is amended to read: ''(b) Unless further extended by the President, this order shall expire on June 30, 2009.''

**Sec. 3.** Section 4 is amended by adding at the end thereof the following new subsection:

''(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.''

THE WHITE HOUSE,
*August 28, 2008*

[FR Doc. E8–20436
Filed 8–29–08; 8:45 am]
Billing code 3195–01–P

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# Presidential Documents

**Title 3—**

## The President

**Notice of August 28, 2008**

## Continuation of the National Emergency With Respect To Certain Terrorist Attacks

Consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency I declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks at the World Trade Center, New York, New York, the Pentagon, and aboard United Airlines flight 93, and the continuing and immediate threat of further attacks on the United States.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the powers and authorities adopted to deal with that emergency, must continue in effect beyond September 14, 2008. Therefore, I am continuing in effect for an additional year the national emergency I declared on September 14, 2001, with respect to the terrorist threat.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
*August 28, 2008*

[FR Doc. E8–20444
Filed 8–29–08; 8:45 am]
Billing code 3195–01–P

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8284 of August 28, 2008**

## National Days of Prayer and Remembrance, 2008

**By the President of the United States of America**

**A Proclamation**

During National Days of Prayer and Remembrance, we pay special tribute to the thousands of innocent victims who died on September 11, 2001. Our Nation honors the brave citizens, service members, police officers, and firefighters who heroically responded in the face of terror. On these important days, we reflect on the terrible events of September 11, 2001, and lift the victims and their families in our prayers.

Our Nation will never forget the individuals who lost their lives in New York, Pennsylvania, and at the Pentagon. America remains inspired by the countless acts of kindness and sacrifice we saw that day—fearless rescuers who rushed toward danger, a beloved priest who died helping others, two office workers who carried a disabled person 68 floors to safety.

We also pray for the safety and success of the members of our Armed Forces now serving freedom's cause. We seek God's grace on their families, and commit to Heaven's care those brave men and women He has called home. We ask the Almighty to watch over America and pray for His providence and continued blessings on our country. May He always guide the United States of America. As we defend our country against its enemies, we pray for help in protecting the gift of freedom from those who seek to destroy it, and we ask the Almighty to strengthen all those securing liberty on distant shores.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, September 5, through Sunday, September 7, 2008, as National Days of Prayer and Remembrance. I ask that the people of the United States and their places of worship mark these National Days of Prayer and Remembrance with memorial services, the ringing of bells, and evening candlelight remembrance vigils. I also invite all people across the world to share in these Days of Prayer and Remembrance.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of August, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E8–20457
Filed 8–29–08; 8:45 am]
Billing code 3195–01–P

# Rules and Regulations

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.

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## DEPARTMENT OF TRANSPORTATION

### 14 CFR Part 97

**[Docket No. 30623; Amdt. No. 3283]**

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

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective September 2, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 2008.

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

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, or;
4. The National Archives and Records Administration (NARA). For Information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

### The Rule

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

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

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

### Conclusion

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

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Issued in Washington, DC on August 8, 2008.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]**

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

** * * Effective Upon Publication*

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 07/10/08 | WV | SUMMERSVILLE | SUMMERSVILLE | 8/6325 | GPS RWY 22, AMDT 2 |
| 07/24/08 | VA | RICHMOND | RICHMOND INTL | 8/9150 | RNAV (GPS) RWY 34, ORIG–B 0 |
| 07/24/08 | CA | SANTA MONICA | SANTA MONICA MUNI | 8/9214 | VOR OR GPS–A, AMDT 10C |
| 07/24/08 | FM | POHNPEI ISLAND | POHNPEI INTL | 8/9241 | NDB/DME RWY 9, AMDT 4 |
| 07/24/08 | FM | POHNPEI ISLAND | POHNPEI INTL | 8/9242 | NDB OR GPS–C, AMDT 3 |
| 07/24/08 | FM | POHNPEI ISLAND | POHNPEI INTL | 8/9244 | RNAV (GPS) RWY 27, ORIG |
| 07/24/08 | FM | POHNPEI ISLAND | POHNPEI INTL | 8/9246 | NDB OR GPS–B, AMDT 3 |
| 07/24/08 | FM | POHNPEI ISLAND | POHNPEI INTL | 8/9249 | NDB/DME OR GPS–A, AMDT 1A |
| 07/24/08 | FM | POHNPEI ISLAND | POHNPEI INTL | 8/9250 | RNAV (GPS) RWY 9, ORIG |
| 07/25/08 | FL | MIAMI | KENDALL-TAMIAMI EXECUTIVE | 8/9372 | RNAV (GPS) RWY 9R, ORIG–A |
| 07/25/08 | FL | MIAMI | KENDALL-TAMIAMI EXECUTIVE | 8/9373 | ILS OR LOC RWY 9R, AMDT 9 |
| 07/28/08 | TN | NASHVILLE | JOHN C. TUNE | 8/9579 | ILS/DME RWY 20, ORIG |
| 07/28/08 | TN | NASHVILLE | JOHN C. TUNE | 8/9580 | RNAV (GPS) RWY 2, ORIG |
| 07/29/08 | OR | PORTLAND | PORTLAND INTL | 8/9657 | RNAV (GPS) RWY 10L, ORIG |
| 07/29/08 | FL | DAYTONA BEACH | DAYTONA BEACH INTL | 8/9690 | RNAV (GPS) Y RWY 7L, ORIG–A |
| 07/29/08 | FL | DAYTONA BEACH | DAYTONA BEACH INTL | 8/9691 | RNAV (GPS) RWY 7R, ORIG–A |
| 07/29/08 | FL | DAYTONA BEACH | DAYTONA BEACH INTL | 8/9692 | RNAV (GPS) RWY 34, AMDT 1A |
| 07/29/08 | FL | DAYTONA BEACH | DAYTONA BEACH INTL | 8/9693 | RNAV (GPS) Z RWY 7L, ORIG |
| 07/29/08 | FL | DAYTONA BEACH | DAYTONA BEACH INTL | 8/9694 | RNAV (GPS) RWY 16, AMDT 1 |
| 07/29/08 | FL | DAYTONA BEACH | DAYTONA BEACH INTL | 8/9696 | RADAR–1, AMDT 8A |
| 07/29/08 | AK | IGIUGIG | IGIUGIG | 8/9747 | RNAV (GPS) RWY 23, ORIG–A |
| 07/29/08 | AK | IGIUGIG | IGIUGIG | 8/9748 | RNAV (GPS) RWY 5, ORIG–A |
| 07/29/08 | NV | LOVELOCK | DERBY FIELD | 8/9782 | VOR OR GPS–C, ORIG–A |
| 07/29/08 | NV | LOVELOCK | DERBY FIELD | 8/9783 | VOR/DME OR GPS–A, ORIG–A |
| 07/30/08 | NJ | WILDWOOD | CAPE MAY COUNTY | 8/9934 | RNAV (GPS) RWY 19, ORIG–A |
| 07/30/08 | NJ | WILDWOOD | CAPE MAY COUNTY | 8/9935 | LOC RWY 19, AMDT 6B |
| 07/30/08 | SC | GREENVILLE | GREENVILLE DOWNTOWN | 8/9970 | RADAR–1, AMDT 13 |
| 07/30/08 | NH | LACONIA | LACONIA MUNI | 8/9971 | TAKEOFF MINS AND OBSTACLE DP, AMDT 3 |
| 07/30/08 | MS | GREENVILLE | MID DELTA REGIONAL | 8/9983 | ILS OR LOC RWY 18L, AMDT 9C |
| 07/30/08 | CA | ALTURAS | ALTURAS MUNI | 8/0021 | RNAV (GPS) RWY 31, ORIG |
| 07/30/08 | VA | MANASSAS | MANASSAS RGNL/HARRY P. DAVIS FIELD. | 8/0042 | ILS OR LOC RWY 16L, AMDT 4C |
| 07/30/08 | PA | BUTLER | BUTLER COUNTY/K W SCHOLTER FLD. | 8/0043 | RNAV (GPS) RWY 8, ORIG–A |
| 07/31/08 | CA | LOS ANGELES | LOS ANGELES INTL | 8/0215 | RNAV (GPS) Y RWY 6L, AMDT 1 |
| 07/31/08 | CA | LOS ANGELES | LOS ANGELES INTL | 8/0216 | RNAV (GPS) Y RWY 6R, AMDT 1 |
| 07/31/08 | CA | LOS ANGELES | LOS ANGELES INTL | 8/0217 | RNAV (GPS) Y RWY 7R, AMDT 2 |
| 07/31/08 | CA | LOS ANGELES | LOS ANGELES INTL | 8/0218 | RNAV (GPS) Y RWY 7L, AMDT 2 |
| 07/31/08 | ME | GREENVILLE | GREENVILLE MUNI | 8/0528 | NDB OR GPS RWY 14, AMDT 4B |
| 07/31/08 | FM | POHNPEI ISLAND | POHNPEI INTL | 8/0533 | NDB OR GPS–B, AMDT 3 |
| 07/31/08 | FM | POHNPEI ISLAND | POHNPEI INTL | 8/0535 | NDB/DME RWY 9, AMDT 4 |
| 07/31/08 | PA | WEST CHESTER | BRANDYWINE | 8/0570 | RNAV (GPS) RWY 27, ORIG |
| 07/31/08 | PA | WEST CHESTER | BRANDYWINE | 8/0577 | RNAV (GPS) RWY 9, ORIG |
| 08/01/08 | CA | LONG BEACH | LONG BEACH/DAUGHERTY FIELD | 8/0689 | VOR OR TACAN RWY 30, AMDT 8 |

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 08/04/08 | CA | TORRANCE | ZAMPERINI FIELD | 8/1176 | VOR OR GPS RWY 11L, AMDT 14A |
| 08/04/08 | CA | TORRANCE | ZAMPERINI FIELD | 8/1177 | ILS RWY 29R, AMDT 2 |
| 08/05/08 | AK | KOBUK | KOBUK | 8/1375 | RNAV (GPS) RWY 27, ORIG |
| 08/05/08 | AK | KOBUK | KOBUK | 8/1376 | RNAV (GPS) RWY 9, ORIG |
| 08/05/08 | AL | BESSEMER | BESSEMER | 8/1447 | GPS RWY 23, ORIG |
| 08/05/08 | AL | BESSEMER | BESSEMER | 8/1449 | RNAV (GPS) RWY 5, ORIG |
| 08/05/08 | AL | BESSEMER | BESSEMER | 8/1452 | ILS OR LOC RWY 5, AMDT 1 |
| 08/01/08 | MT | CONRAD | CONRAD | 8/0707 | NDB OR GPS RWY 24, AMDT 4A |
| 08/01/08 | MT | GREAT FALLS | GREAT FALLS INTL | 8/0710 | NDB RWY 34, AMDT 16A |
| 08/05/08 | WA | BURLINGTON/MT VERNON. | SKAGIT REGIONAL | 8/1260 | TAKEOFF MINIMUMS AND OBSTACLE DP, ORIG |

[FR Doc. E8–19541 Filed 8–29–08; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Parts 738 and 740

**[Docket No. 080717846–8879–01]**

**RIN 0694–AE34**

## Addition of Kosovo in the Export Administration Regulations

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

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to establish export licensing requirements for Kosovo.

**DATES:** *Effective Date:* This rule is effective: September 2, 2008.

**ADDRESSES:** Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. You may submit comments, identified by RIN 0694–AE34, by any of the following methods:

- *E-mail: publiccomments@bis.doc.gov*. Include ''RIN 0694–AE34'' in the subject line of the message.
- *Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- *Mail or Hand Delivery/Courier:* Jeffrey Lynch, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AE34.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AE34)—all comments on the latter should be submitted by one of the three methods outlined above.

**FOR FURTHER INFORMATION CONTACT:** Joan M. Maloney-Roberts, Foreign Policy Division, Office of Nonproliferation Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–0171.

**SUPPLEMENTARY INFORMATION:** This final rule adds Kosovo to the EAR for export licensing purposes. The United States recognized Kosovo as a sovereign state on February 18, 2008. Specifically, this rule amends the EAR as follows:

1. In Supplement No. 1 to part 738 of the EAR, the Commerce Country Chart is amended by adding ''Kosovo''.
2. In Supplement No. 1 to part 740 of the EAR (Country Groups), Country Group B is amended by adding ''Kosovo''.
3. Section 740.7(d)(1) of the EAR (Computer Tier 3 destinations) is amended by adding ''Kosovo'' for License Exception APP purposes.

This rule does not amend Supplement No. 2 to part 745, ''States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction,'' to include Kosovo, because Kosovo is not currently a State Party to the Convention.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended most recently by the Notice of July 23, 2008, 72 FR 43603 (July 25, 2008), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

### Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.
2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. This rule is not expected to result in any change for collection purposes. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.
3. This rule does not contain policies with Federalism implications as this term is defined under Executive Order 13132.
4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of

proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Jeffery Lynch, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

**List of Subjects**

*15 CFR Part 738*

Exports.

*15 CFR Part 740*

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

■ Accordingly, parts 738 and 740 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

## PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 2. Supplement No. 1 to part 738 is amended by adding, in alphabetical order, a new entry for ''Kosovo'' to read as follows:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART
[Reason for control]

| Countries | Chemical & biological weapons | | | Nuclear non-proliferation | | National security | | Missile tech | Regional stability | | Firearms convention | Crime control | | | Anti-terrorism | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | CB 1 | CB 2 | CB 3 | NP 1 | NP 2 | NS 1 | NS 2 | MT 1 | RS 1 | RS 2 | FC 1 | CC 1 | CC 2 | CC 3 | AT 1 | AT 2 |
| * | | * | | * | | * | | * | | * | | * | | | | |
| Kosovo | X | X | | X | | X | X | X | X | X | | X | X | X | | |
| * | | * | | * | | * | | * | | * | | * | | | | |

* * * * *

## PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 4. In § 740.7, paragraph (d)(1) is amended by adding, in alphabetical order, ''Kosovo''.

**Supplement No. 1 to Part 740 [Amended]**

■ 5. In Supplement No. 1 to part 740, Country Groups, Country Group B is amended by adding, in alphabetical order, ''Kosovo''.

Dated: August 26, 2008.

**Christopher R. Wall,**

*Assistant Secretary for Export Administration.*

[FR Doc. E8–20287 Filed 8–29–08; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF THE TREASURY

## Office of the Secretary

## 31 CFR Part 1

## Privacy Act; Implementation

**AGENCY:** Office of the Secretary, Treasury.

**ACTION:** Interim rule; request for comments.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of an amendment to its Privacy Act regulations by revising the title of one Privacy Act system of records and by removing five other Privacy Act systems of records. These systems of records are related to the functions of the Alcohol and Tobacco Tax and Trade Bureau (TTB).

**DATES:** This interim rule is effective on September 2, 2008. Comments on this interim rule must be received on or before October 2, 2008.

**ADDRESSES:** You may send comments on this interim rule to one of the following addresses:

• *http://www.regulations.gov* (Federal e-rulemaking portal; follow the instructions for submitting comments); or

• Gerry Isenberg, Assistant Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

**Public Participation**

*Comments Sought*

We request comments on this interim rule from interested members of the public.

*Submitting Comments*

You may submit comments on this notice by one of the following two methods:

• *Federal e-Rulemaking Portal:* To submit a comment on this notice using the online Federal e-rulemaking portal, visit *http://www.regulations.gov* and select ''Alcohol and Tobacco Tax and Trade Bureau'' from the agency drop-down menu and click ''Submit.'' In the resulting docket list, open the docket containing this interim rule, click the ''Add Comments'' icon for this interim rule, and complete the resulting comment form. You may attach supplemental files to your comment. A direct link to the appropriate docket is also available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml*. More complete information on using Regulations.gov, including instructions for accessing open and closed dockets and for submitting comments, is available through the site's ''User Tips'' link.

• *Mail:* You may send written comments to Gerry Isenberg, Assistant

Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be in English, legible, and written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *http://www.regulations.gov,* please enter the entity's name in the ''Organization'' blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

*Confidentiality*

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

*Public Disclosure*

On the Federal e-rulemaking portal, TTB will post, and you may view, copies of this notice and any electronic or mailed comments TTB receives about this proposal. To view a posted document or comment, go to *http://www.regulations.gov* and select ''Alcohol and Tobacco Tax and Trade Bureau'' from the agency drop-down menu and click ''Submit.'' In the resulting docket list, click the appropriate docket number, then click the ''View'' icon for any document or comment posted under that docket number. A direct link to the docket containing this interim rule is also available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.*

All submitted and posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You also may view copies of this notice and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 × 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments or other materials.

You may view copies of this document and any comments TTB receives about this proposal at *http://www.regulations.gov.* A direct link to the appropriate docket is available on the TTB Web site at *http://www.ttb.gov/regulations_ laws/all_rulemaking.shtml.* You also may view copies of this document and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400.

**FOR FURTHER INFORMATION CONTACT:** Gerry Isenberg, Assistant Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20005; phone 202–927–8210.

**SUPPLEMENTARY INFORMATION:** Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. The Bureau of Alcohol, Tobacco, Firearms and Explosives oversees Federal firearms, explosives, and arson laws and programs, and administers laws pertaining to alcohol and tobacco smuggling and diversion. TTB is responsible for administering Chapters 51 (relating to distilled spirits, wine, and beer) and 52 (relating to tobacco products and cigarette papers and tubes) of title 26 U.S.C., the Internal Revenue Code of 1986, as amended. TTB also administers sections 4181 and 4182 (relating to the excise tax on firearms and ammunition) of the Internal Revenue Code of 1986 and title 27 U.S.C. (relating to alcohol).

Section 1512 of the Homeland Security Act of 2002 authorized TTB to continue its operations under completed administrative actions taken by ATF until such actions are amended, modified, superseded, terminated, set aside, or revoked in accordance with law. As of January 24, 2003, the following Privacy Act systems of records notices were in effect for ATF records:

ATF .001—Administrative Record System;
ATF .002—Correspondence Record System;
ATF .003—Criminal Investigation Report System;
ATF .007—Personnel Record System;
ATF .008—Regulatory Enforcement Record System; and
ATF .009—Technical and Scientific Services Record System.

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, and Office of Management and Budget (OMB) Circular No. A–130, TTB has completed a review of its current records to determine which records are Privacy Act systems of records. The Privacy Act system of records formerly entitled ''Treasury/ATF .008–Regulatory Enforcement Record System'' will be maintained by TTB under the title ''Treasury/TTB .001–Regulatory Enforcement Record System.''

The following systems of records are being removed from the Department of the Treasury's Privacy Act systems of records inventory:

ATF .001—Administrative Record System;
ATF .002—Correspondence Record System;
ATF .003—Criminal Investigation Report System;
ATF .007—Personnel Record System; and
ATF .009—Technical and Scientific Services Record System.

Note that while ATF .001 and ATF .002 are part of the current Department of the Treasury systems of records inventory and are being deleted from that inventory pursuant to a separate notice, these two systems are not part of the list of exempt systems of records in 31 CFR 1.36. Therefore, these two systems do not need to be deleted from the list of exempt systems as part of the interim rule amendment of section 1.36.

The Department of the Treasury as part of this action is also amending 31 CFR 1.20(b) to reflect the organizational change in the scope of its Privacy Act regulations by revising the title of the bureau from ''Bureau of Alcohol, Tobacco and Firearms'' to ''Alcohol and Tobacco Tax and Trade Bureau.''

Pursuant to 5 U.S.C. 552a(k)(2), the Department of the Treasury hereby exempts ''Treasury/TTB .001–Regulatory Enforcement Record System'' from the following provisions of 5 U.S.C. 552a: 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

As set out in 31 CFR 1.36(h), the Department exempts this system of records from these provisions of 5 U.S.C. 552a for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of

disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of the Department and of law enforcement agencies outside the Department of the Treasury to make effective use of information maintained by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that an agency is conducting an investigation into their illegal activities and could reveal the geographic location of the investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their illegal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for detection or apprehension. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their illegal activities and could inform them of the general nature of that information.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to utilize and provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their detection or apprehension;

(B) Enabling them to destroy or alter evidence of illegal conduct that would form the basis for their detection or apprehension, and

(C) Using knowledge that investigators had reason to believe that a violation of law was about to be committed, to delay the commission of the violation or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning non-criminal acts to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers or other persons who compiled information regarding the individual's illegal activities and thereby endanger the physical safety of those undercover officers, persons, or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in 31 CFR 1.36(h)(2)(i) through (iv), permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that the Department may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in 31 CFR 1.36(h)(2), these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the system of records could impair the Department's ability to collect, utilize, and disseminate valuable law enforcement information.

(i) At the time that the Department collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a Department purpose.

(ii) In many cases, especially in the early stages of an investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Not all violations of law discovered by the Department analysts fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including state, local and foreign agencies that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(5) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to complete or continue investigations or to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informers by the subjects of investigations; and

(iii) Cause informers to refuse to give full information to investigators for fear of having their identities as sources disclosed.

Currently, § 1.36 asserts exemptions for four systems of records pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and (k)(5). Three of those systems of records are being removed from the Department's inventory of Privacy Act systems of records. The remaining system of records, entitled ''Treasury/ATF .008—Regulatory Enforcement Record System,'' will be maintained by TTB under the revised designation ''Treasury/TTB .001—Regulatory Enforcement Record System'' and will retain the exemption currently claimed for that system pursuant to 5 U.S.C. 552a(k)(2). Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system contains investigatory material compiled for law enforcement purposes.

This interim rule revises the relevant headings and tables in 31 CFR 1.36 to reflect the organizational changes made by the Homeland Security Act of 2002 and the resulting changes to the systems of records discussed above. Specifically, in paragraphs 1.36(c)(1)(ii), (g)(1)(ii), and (m)(1)(ii), the references to ''Bureau of Alcohol, Tobacco and Firearms'' are revised to read ''Alcohol and Tobacco Tax and Trade Bureau,'' and the tables in paragraphs (c)(1)(ii), listing ''ATF .003 Criminal Investigation Report System,'' and (m)(1)(ii), listing ''ATF .007 Personnel Record System,'' are removed in their entirety. Also, in the table in paragraph (g)(1)(ii), ''ATF .008'' is revised to read ''TTB .001'' and ''ATF .009 Technical and Scientific Services Record System'' is being removed. In addition, we take this opportunity to correct two typographical errors by correcting ''U.S.C. 552a'' to read ''5 U.S.C. 552a'' at the beginning of paragraphs (h)(5) and (j)(5).

These regulations are being published as an interim final rule because the amendments contained therein do not impose any requirements on any member of the public. These amendments are the most efficient means for the Department to implement its internal requirements for complying with the Privacy Act. Accordingly, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Department finds good cause that prior notice and other public procedures with respect to this rule are unnecessary, and good cause for making this interim final rule effective 30 days after publication in the **Federal Register**.

Pursuant to Executive Order 12866, it has been determined that this interim final rule is not a significant regulatory action and, therefore, does not require a regulatory impact analysis.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612, do not apply.

**List of Subjects in 31 CFR Part 1**

Privacy.

## PART 1—[AMENDED]

## Subpart C—Privacy Act

■ Part 1 of title 31 of the Code of Federal Regulations is amended as follows:

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

**Authority:** 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Section 1.20 is amended by revising paragraph (b) to read as follows:

**§ 1.20 Purpose and scope of regulations.**

* * * * *

(b) Alcohol and Tobacco Tax and Trade Bureau.

* * * * *

■ 3. Section 1.36 of subpart C is amended by revising paragraphs (c)(1)(ii) and (g)(1)(ii), removing the reference ''U.S.C. 552a'' from paragraphs (h)(5) introductory text and (j)(5) introductory text and adding ''5 U.S.C. 552a'' in its place, and revising paragraph (m)(1)(ii) to read as follows:

**§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.**

* * * * *

(c) * * *

(1) * * *

(ii) Alcohol and Tobacco Tax and Trade Bureau.

* * * * *

(g) * * *

(1) * * *

(ii) Alcohol and Tobacco Tax and Trade Bureau:

| Number | Name of system |
|---|---|
| TTB .001 ..... | Regulatory Enforcement Record System. |

* * * * *

(m) * * *

(1) * * *

(ii) Alcohol and Tobacco Tax and Trade Bureau.

* * * * *

Dated: July 23, 2008.

**Peter B. McCarthy,**

*Assistant Secretary for Management and Chief Financial Officer.*

[FR Doc. E8–20205 Filed 8–29–08; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2008–0891]**

## Regattas and Marine Parades; Great Lakes Annual Marine Events

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce two local regulations for annual regattas and marine parades in the Captain of the Port Detroit zone. The ''Detroit Belle Isle Gran Prix'' regulated area will be enforced from 7:30 a.m. to 7:30 p.m. on August 29, 30, and 31, 2008. ''The Old Club Cannonade'' regulated area will be enforced from 1:30 p.m. to 4:30 p.m. on October 18, 2008. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades. During the enforcement periods, no person or vessel may enter the regulated areas without permission of the Captain of the Port or the Coast Guard Patrol Commander.

**DATES:** The regulated area described in 33 CFR 100.912 will be enforced from 7:30 a.m. to 7:30 p.m. on August 29, 30, and 31, 2008. The regulated area described in 33 CFR 100.917 will be

enforced from 1:30 p.m. to 4:30 p.m. on October 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** CDR Joseph Snowden, Prevention, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568–9580.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the special local regulation for the annual Detroit Belle Isle Gran Prix, Detroit, MI, in 33 CFR 100.912 on August 29, 30, and 31, 2008, from 7:30 a.m. until 7:30 p.m. The Coast Guard will enforce the special local regulation for the annual Old Club Cannonade, Harsens Island, MI, in 33 CFR 100.917 on October 18, 2008, from 1:30 p.m. until 4:30 p.m.

Under the provisions of 33 CFR 100.912 and 33 CFR 100.917 no vessel may enter, transit through, or anchor within the regulated areas without the permission of the Captain of the Port or the Coast Guard Patrol Commander.

The ''Coast Guard Patrol Commander'' 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 Coast Guard Patrol Commander will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or the Coast Guard Patrol Commander may be contacted via VHF Channel 16.

Vessel operators given permission to enter or operate in the regulated areas must comply with all directions given to them by the Captain of the Port or the Coast Guard Patrol Commander.

This notice is issued under authority of 33 CFR 100.912, 33 CFR 100.917, and 5 U.S.C. 552(a). In order to ensure the safety of spectators and transiting vessels, these regulated areas will be in effect for the duration of the events. In the event that these regulated areas affect shipping, commercial vessels may request permission from the Captain of the Port or the Coast Guard Patrol Commander to transit through the regulated area. Requests must be made in advance and approved by the Captain of Port or the Coast Guard Patrol Commander before transits will be authorized. The Captain of the Port or the Coast Guard Patrol Commander may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF–FM. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Dated: August 25, 2008.

**F.M. Midgette,**

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

[FR Doc. E8–20308 Filed 8–29–08; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R08–OAR–2008–0340; FRL–8700–7]**

## Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revised Transportation Conformity Consultation Process, and Approval of Related Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Utah on June 26, 2007 and April 17, 2008. The June 26, 2007 revision updates Section XII of the Utah SIP and Rule R307–110–20 of the Utah Administrative Code (UAC) to meet the federal transportation conformity consultation requirements. The amended Rule R307–110–20 incorporates by reference Section XII, ''Transportation Conformity Consultation,'' of the SIP. The April 17, 2008 revision makes minor changes to sections R307–101–2 ''Definitions,'' R307–115–1 ''Determining Conformity,'' R307–170–7 ''Performance Specification Audits,'' and R307–310–2, ''Definitions,'' and adds R307–101–3 ''Version of CFR Incorporated by Reference.'' EPA is approving the SIP revisions submitted by the State of Utah on June 26, 2007 and April 17, 2008. This action is being taken under section 110 of the Clean Air Act.

**DATES:** This rule is effective on November 3, 2008 without further notice, unless EPA receives adverse comment by October 2, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2008–0340, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: videtich.callie@epa.gov* and *kimes.jeffrey@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R08–OAR–2008–0340. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center home page at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket

materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Kimes, Air Program, Environmental Protection Agency (EPA), Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, phone (303) 312–6445, and e-mail at: *kimes.jeffrey@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Definitions

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

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

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

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

(iv) The words State or Utah mean the State of Utah, unless the context indicates otherwise.

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## I. General Information

### *A. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *http://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:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

## II. What Is the Purpose of This Action?

EPA is approving revisions to Section XII, ''Transportation Conformity Consultation,'' of the Utah SIP, and to Rule R307–110–20 (incorporating by reference Section XII) of the Utah Administrative Code. Section XII of the Utah SIP, ''Transportation Conformity Consultation,'' addresses the requirements of 42 U.S.C. 7506 and 40 CFR 51.390(b) to formalize the consultation process and to ensure early coordination and negotiation among all parties affected by transportation conformity. By approving these provisions, EPA is making them part of the federally enforceable state implementation plan for Utah under the Clean Air Act (CAA).

In addition, EPA is approving minor revisions to sections R307–101–2, ''Definitions;'' R307–115–1, ''Determining Conformity;'' R307–170–7, ''Performance Specification Audits;'' and R307–310–2, ''Definitions;'' these minor revisions change the date of a cross referenced technical source and remove the dates of various CFR and **Federal Register** references and replace them with a reference to new R307–101–3, which references the July 1, 2007 version of the CFR. EPA is also approving R307–101–3, ''Version of CFR Incorporated by Reference.'' By approving these provisions, EPA is making them part of the federally enforceable state implementation plan for Utah under the Clean Air Act (CAA).

## III. What Is the State Process To Submit SIP Revisions to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This action must occur prior to the revision being submitted by a State to EPA.

The Utah Air Quality Board (UAQB) held a public hearing on March 15, 2007 for the revision to Section XII of the Utah SIP, and Rule R307–110–20 of the UAC. These revisions to the State SIP were adopted by the UAQB on May 2, 2007, and were submitted by the Governor to EPA on June 26, 2007. Rule R307–110–20 became effective on May 2, 2007.

While the UAQB held a public comment period from November 14, 2007 to December 31, 2007 on minor revisions to R307–101–2, R307–115–1, R307–170–7, and R307–310–2, and the addition of R307–101–3, no comments were received and a public hearing was not requested. These revisions to the State SIP were adopted by the UAQB on February 6, 2008, and were submitted by the Governor to EPA on April 17, 2008. These revisions became effective on February 8, 2008.

## IV. EPA's Evaluation of the State of Utah June 26, 2007 Submittal

EPA has reviewed the revised State of Utah Conformity Transportation Consultation SIP (Conformity SIP) submitted on June 26, 2007 and finds that approval is warranted. The following is a summary of the key aspects of the SIP and our evaluation of each:

A. We reviewed the submittal to assure consistency with our conformity regulations at 40 CFR 51.390(b), which were revised on January 24, 2008, 73 FR 4438. We also consulted the February 14, 2006, ''Interim Guidance for Implementing the Transportation Conformity provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)''. The guidance document can be found at *http://epa.gov/otaq/stateresources/transconf/*

*policy.htm*. Forty CFR part 51.390(b) establishes the requirements for conformity consultation SIPs. It provides that each state is required to address three specific sections of the EPA Conformity Rules found at 40 CFR part 93. The provisions required are: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (certain control measures); and 40 CFR 93.125(c) (mitigation measures).

i. 40 CFR 93.105, ''Consultation,'' requires the transportation conformity SIP to include procedures for interagency consultation, resolution of conflicts, and public consultation. Utah's revised Conformity SIP establishes the Interagency Consultation Team (ICT). The ICT consists of the Utah Division of Air Quality (UDAQ), all Utah metropolitan planning organizations (MPOs) located in designated non-attainment and maintenance areas, Utah Department of Transportation (UDOT), Utah public transit agencies, Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and EPA. The revision establishes and outlines the specific roles and responsibilities of each of the members of the ICT. It also describes the interagency collaboration, consultation, and planning process. The SIP addresses SIP development, transportation planning and specific sub-processes such as emission and traffic modeling, project planning and changes, conformity triggers, and responsibility for conformity in donut areas (those areas within nonattainment and maintenance areas that are not included within any MPO boundaries).

The revised Conformity SIP also includes procedures for resolving conformity-related disputes and including the public in the transportation conformity process.

ii. 40 CFR 93.122(a)(4)(ii) requires the conformity implementation plan revision to provide that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled. The revised Conformity SIP meets this requirement.

iii. 40 CFR 93.125 relates to the enforceability of a transportation project design concept and scope and project-level mitigation and control measures. 40 CFR 93.125(c) requires that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that project sponsors must comply with such commitments. Utah has included these requirements in the revised Conformity SIP.

## V. EPA's Evaluation of the State of Utah April 17, 2008 Submittal

EPA has reviewed the revisions to sections R307–101–2, ''Definitions;'' R307–115–1, ''Determining Conformity;'' R307–170–7, ''Performance Specification Audits;'' and R307–310–2, ''Definitions.'' EPA has also reviewed new R307–101–3, ''Version of CFR Incorporated by Reference;'' EPA finds that approval of these SIP revisions is warranted. EPA's description of the revisions submitted April 17, 2008 follows:

A. Minor definition changes

i. Changes to R307–101–2, ''Definitions.'' The State added the acronym ''ACGIH'' for the American Conference of Government Industrial Hygienists, changed the reference date for an ACGIH publication from 2000 to 2007, added the acronym ''VOC'' for Volatile Organic Compound, and removed reference dates for 40 CFR 51.100(s)(1), which defines VOC, and replaced them with a reference to R307–101–3, which references the July 1, 2007 version of the CFR.

B. Removal of citations to various specific volumes of the **Federal Register** and CFR and replacement with a reference to new R307–101–3, which references the July 1, 2007 version of the CFR.

i. In addition to R307–101–2, ''Definitions,'' discussed above, R307–115–1, ''Determining Conformity,'' R307–170–7, ''Performance Specification Audits,'' and R307–310–2, ''Definitions,'' each incorporated by reference or cross-referenced specific EPA regulations by citing various volumes of the **Federal Register** of CFR. Utah replaced these disparate citations with a cross-reference to new R307–101–3, which in turn references the July 1, 2007 version of the CFR. This change will simplify future changes to the SIP to incorporate by reference or cross-reference future version of EPA's regulations.

## VI. Consideration of Section 110(l) of the Clean Air Act

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a National Ambient Air Quality Standard (NAAQS) or any other applicable requirement of the CAA. These revisions will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

## VII. Final Action

EPA is approving, through direct final rulemaking, the revision to Section XII, ''Transportation Conformity Consultation,'' of the Utah SIP, and to Rule R307–110–20 (which incorporates Section XII) of the Utah Administrative Code, to reflect that the State has adequately addressed the required elements of 42 U.S.C. 7506 and 40 CFR 51.390(b). These revisions were adopted on May 2, 2007, and were submitted to EPA on June 26, 2007. Rule 307–110–20 became effective on May 2, 2007.

In addition, EPA is approving revisions to sections R307–101–2, ''Definitions;'' R307–115–1, ''Determining Conformity;'' R307–170–7, ''Performance Specification Audits;'' and R307–310–2, ''Definitions.'' EPA is also approving the addition of R307–101–3, ''Version of CFR Incorporated by Reference.'' These revisions were adopted on February 6, 2008, and were submitted to EPA on April 17, 2008. These revisions became effective on February 8, 2008. These revisions are minor and do not affect the adequacy of the SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective November 3, 2008 without further notice unless the Agency receives adverse comments by October 2, 2008. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## VIII. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the

Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Conformity, Incorporation by reference, Intergovernmental relations, Transportation plan, Transportation Improvement Program, Volatile organic compounds.

Dated: July 25, 2008.

**Judith Wong,**

*Acting Deputy Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended to read as follows:

## PART 52—[AMENDED]

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

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

## Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraphs (c)(66) and (c)(67) to read as follows:

**§ 52.2320 Identification of plan.**

* * * * *

(c) * * *

(66) Revisions to the Utah State Implementation Plan, ''Section XII, Transportation Conformity Consultation,'' as submitted by the Governor on June 26, 2007; and revisions to UAC R307–110–20, ''Section XII, Transportation Conformity Consultation,'' as submitted by the Governor on June 26, 2007.

(i) Incorporation by Reference.

(A) UAC R307–110–20, ''Section XII, Transportation Conformity Consultation,'' as adopted by the Utah Air Quality Board on May 2, 2007, effective on May 2, 2007.

(67) Revisions to the Utah State Implementation Plan, Sections R307–101–2, ''Definitions,'' R307–115–1, ''Determining Conformity,'' R307–170–7, ''Performance Specification Audits,'' R307–310–2, ''Definitions,'' and R307–101–3, ''Version of CFR Incorporated by Reference,'' as submitted by the Governor on April 17, 2008.

(i) Incorporation by Reference.

(A) UAC R307–101–2, ''Definitions,'' as adopted by the Utah Air Quality Board on February 6, 2008, effective on February 8, 2008.

(B) UAC R307–115–1, ''Determining Conformity,'' as adopted by the Utah Air Quality Board on February 6, 2008, effective on February 8, 2008.

(C) UAC R307–170–7, ''Performance Specification Audits,'' as by the Utah Air Quality Board adopted on February 6, 2008, effective on February 8, 2008.

(D) UAC R307–310–2, ''Definitions,'' as adopted by the Utah Air Quality Board on February 6, 2008, effective on February 8, 2008.

(E) UAC R307–101–3, ''Version of CFR Incorporated by Reference,'' as adopted by the Utah Air Quality Board on February 6, 2008, effective on February 8, 2008.

[FR Doc. E8–20139 Filed 8–29–08; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R09–OAR–2006–0714, FRL–8701–4]**

## Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving minor administrative changes to local rules that address permitting requirements.

**DATES:** This rule is effective on November 3, 2008 without further notice, unless EPA receives adverse comments by October 2, 2008. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2006–0714 by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
- *E-mail: R9airpermits@epa.gov.*
- *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

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

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

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

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## I. The State's Submittal

### *A. What rules did the State submit?*

Table 1 lists the rules we are approving with the date that they were amended by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES FOR FULL APPROVAL

| Local agency | Rule No. | Rule title | Amended | Submitted |
|---|---|---|---|---|
| AVAQMD | 101 | Title | 05/17/05 | 03/10/06 |
| AVAQMD | 102 | Definition of Terms | 05/17/05 | 03/10/06 |
| AVAQMD | 106 | Increments of Progress | 05/17/05 | 03/10/06 |
| AVAQMD | 108 | Alternative Emission Control Plans | 05/17/05 | 03/10/06 |
| AVAQMD | 109 | Recordkeeping for Volatile Organic Compound Emissions | 05/17/05 | 03/10/06 |
| AVAQMD | 208 | Permit for Open Burning | 05/17/05 | 03/10/06 |
| AVAQMD | 210 | Applications | 05/17/05 | 03/10/06 |
| AVAQMD | 212 | Standards for Approving Permits | 05/17/05 | 03/10/06 |
| AVAQMD | 218 | Stack Monitoring | 05/17/05 | 03/10/06 |
| AVAQMD | 220 | Exemption—Net Increase in Emissions | 05/17/05 | 03/10/06 |
| AVAQMD | 221 | Plans | 05/17/05 | 03/10/06 |
| AVAQMD | 226 | Limitations on Potential to Emit | 05/17/05 | 03/10/06 |

On March 30, 2006, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

### *B. Are there other versions of these rules?*

We approved Rules 101 and 102 into the SIP on December 31, 1998 (63 FR 72197); Rule 106 on June 14, 1978 (43 FR 25686); Rule 108 on August 30, 1993 (58 FR 45445); Rule 109 on April 13, 1995 (60 FR 18750); Rule 210 on October 8, 1976 (43 FR 40011); Rule 212 on December 4, 1996 (61 FR 64291); Rules 218 and 220 on July 6, 1982 (47 FR 29231); Rule 221 on April 17, 1987 (52 FR 12522); and Rule 226 on August 31, 2004 (69 FR 53005).

There is no version of Rule 208 in the SIP. We did not act on a version of Rule 208 adopted by AVAQMD on January 5, 1990 and submitted by CARB to us on December 31, 1990. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittal.

### *C. What is the purpose of the submitted rule and rule revisions?*

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules

must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193).

The TSD has more information about these rules.

## II. EPA's Evaluation and Action

*A. How is EPA evaluating the rules?*

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193).

The following guidance documents were used for reference:

- *Review of New Sources and Modifications,* U.S. EPA, 40 CFR part 51, subpart I.
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* EPA Region 9, (August 21, 2001). (The Little Bluebook)

*B. Do the rules meet the evaluation criteria?*

We believe the rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

*C. Public Comment and Final Action*

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted Rules 101, 102, 106, 108, 109, 208, 210, 212, 218, 220, 221, and 226 because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by October 2, 2008, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 3, 2008. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

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

Dated: July 11, 2008.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

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

## PART 52—[AMENDED]

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

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

## Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(344)(i)(A)(*2*), (*3*), and (*4*) to read as follows:

### § 52.220 Identification of plan.

* * * * *

(c) * * *

(344) * * *

(i) * * *

(A) * * *

(*2*) Rule 101, ''Title,'' and Rule 102, ''Definition of Terms,'' originally adopted on February 4, 1977 and amended on May 17, 2005.

(*3*) Rule 106, ''Increments of Progress,'' Rule 210, ''Applications,'' Rule 212, ''Standards for Approving Permits,'' and Rule 218, ''Stack Monitoring,'' originally adopted on January 9, 1976 and amended on May 17, 2005.

(*4*) Rule 108, ''Alternative Emission Control Plans,'' Rule 109, ''Recordkeeping for Volatile Organic Compound Emissions,'' Rule 208, ''Permit for Open Burning,'' Rule 220, ''Exemption—Net Increase in Emissions,'' Rule 221, ''Plans,'' and Rule 226, ''Limitations on Potential to Emit,'' originally adopted on March 2, 1990, May 5, 1989, October 8, 1976, November 4, 1977, January 4, 1985, and March 17, 1998, respectively, and amended on May 17, 2005.

* * * * *

[FR Doc. E8–20137 Filed 8–29–08; 8:45 am]

BILLING CODE 6560–50–P

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 302–17

**[FTR Amendment 2008–03; FTR Case 2008–302; Docket2008–002, Sequence 1]**

**RIN 3090–AI48**

### Federal Travel Regulation; Relocation Income Tax (RIT) Allowance TaxTables–2008 Update

*Correction*

In rule document E8–10022 beginning on page 25539 in the issue ofWednesday, May 7, 2008 make the following corrections:

On page 25542, in Part 302–17, under Appendix D to Part 302–17,the tables should read as set forth below:

**Appendix D to Part 302–17—[Corrected]**

PUERTO RICO MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR2007

[Use the following table to compute the RIT allowance for Puerto Ricotaxes, as prescribed in 302–17.8(e)(4)(i), on taxable reimbursements receivedduring calendar year 2007.]

| Marginal tax rate | For married person living with spouse and filing jointly, married person not living with spouse, single person, or head of household | |
|---|---|---|
| Percent | Over | But not over |
| 7% ..... | $2,000 | $17,000 |
| 14% + 1,190 | 17,000 | 30,000 |
| 25% + 3,010 | 30,000 | 50,000 |
| 33% + 8,010 | 50,000 | ..... |

| Marginal tax rate | For married person living with spouse and filing separately | |
|---|---|---|
| Percent | Over | But not over |
| 7% ..... | $1,000 | $8,500 |
| 14% + $595 .. | 8,500 | 15,000 |
| 25% + 1,505 | 15,000 | 25,000 |
| 33% + 4,005 | 25,000 | ..... |

Source: Individual Income Tax Return 2007—Long Form; Commonwealth of Puerto Rico, Department of the Treasury, P.O. Box 9022501, San Juan, PR 00902–2501; *http://www.hacienda.gobierno.pr/.*

[FR Doc. Z8–10022 Filed 8–29–08; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 229

**[Docket No. 080509647–81084–02]**

**RIN 0648–AW84**

### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

**ACTION:** Final rule.

**SUMMARY:** Through this final rule, the National Marine Fisheries Service (NMFS) amends the regulations implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP), to delay the effective date of a broad-based gear modification and remove one of the gear-related definitions required in the recent amendment to the ALWTRP. Specifically, NMFS will delay the broad-based sinking groundline requirement for trap/pot fishermen along the Atlantic coast for an additional six months, from October 5, 2008, to April 5, 2009. Additionally, this final rule will delete the term ''neutrally buoyant line'' and its associated definition from the ALWTRP regulations.

**DATES:** This final rule is effective October 2, 2008.

**ADDRESSES:** Copies of the proposed rule and Regulatory Impact Review related to this action can be obtained from the ALWTRP website listed under the Electronic Access portion of this document or writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930. For additional **ADDRESSE**S and web sites for document availability see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS, Northeast Region, 978–281–9300 Ext. 6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*. The complete text of the regulations implementing the ALWTRP can be found either in the Code of Federal Regulations (CFR) at 50 CFR 229.32 or downloaded from the website, along with a guide to the regulations.

#### Background

This final rule implements modifications to the October 5, 2007 amendment to the ALWTRP (72 FR 57104, October 5, 2007; 73 FR 19171, April 9, 2008). Details concerning the development and justification of this final rule were provided in the preamble of the proposed rule (73 FR 32278, June 6, 2008), and are not repeated here.

*Delay of Broad-based Sinking Groundline Requirement for Atlantic Trap/Pot Fishermen*

This final rule will provide an additional six months (through April 5, 2009) for trap/pot fishermen along the Atlantic coast to comply with the AWLTRP's broad-based sinking groundline requirement. Regulated trap/pot fisheries include, but are not limited to, American lobster, crab (red, Jonah, rock, and blue), hagfish, finfish (black sea bass, scup, tautog, cod, haddock,

pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp. All other ALWTRP amendments will remain in effect, including the sinking groundline requirement for trap/pot fishermen in Cape Cod Bay Restricted Area (January 1 - April 15) and all AWLTRP-regulated gillnet fisheries.

*Deletion of the Term ''Neutrally Buoyant Line'' and its Associated Definition*

Under this final rule, the term ''neutrally buoyant line'' and its definition will be deleted from the ALWTRP regulations, so that only the ''sinking line'' term and definition will remain. In order to ensure clarity, the term will be removed for both buoy line and groundline requirements and for both gillnet and trap/pot fisheries. Accordingly, the ''sinking line'' definition will be modified to eliminate reference to ''see also neutrally buoyant line.''

*Comments on the Notice of Proposed Rulemaking and Responses*

NMFS issued a proposed rule on June 6, 2008 (73 FR 32278) with a 30–day comment period through July 7, 2008. NMFS received approximately 251 letters on the proposed rule via letter, fax, or email. Additionally, NMFS received approximately 2,950 form letters and/or signatures on the proposed rule. Of the 2,950 form letters, 2,840 copies were received via *www.regulations.gov*, 50 copies were a second type of form letter, and 60 copies were received from a third type of form letter. All comments were reviewed by NMFS and included issues regarding the proposed delay, NMFS' mandates, and the proposed removal of the term ''neutrally buoyant line'' and its associated definition from ALWTRP regulations. Comments outside the scope of the proposed action are not responded to here. However, many of these comments (e.g., regarding problems with the use of sinking groundline, ship strike mitigation) were addressed in the responses to comments on the recent ALWTRP final rule (72 FR 57104, October 5, 2007) and Final Environmental Impact Statement (FEIS) (NMFS 2007) and are not repeated here. Comments related to reducing risk associated with vertical line are also outside the scope of this action but will be provided to the Atlantic Large Whale Take Reduction Team (ALWTRT) for consideration at its next meeting. The comments related to the proposed rule are summarized below, and NMFS' response follows each comment.

Comments on the Delay

*Comment 1:* Many commenters expressed their support for the proposed six month extension (through April 5, 2009). Commenters noted that the current implementation deadline falls during the most profitable fishing period, and requiring lobstermen to remove and reconfigure gear at this time would cause a substantial loss in financial revenue (to them and their surrounding communities), whereas an extension would allow them to fish uninterrupted and maximize profitability during the height of the lobster harvesting season. Commenters stated that converting to sinking line is time-consuming and expensive, especially during prime fishing months and believed that gear should be converted gradually during the winter off-season, which would provide a more sensible, and physically and financially easier transition. Other commenters felt that the weather is too unpredictable during October and the wind and sea conditions would be too dangerous [for gear conversion]. One commenter stated that fishermen simply need more time to comply and a delay in implementation would allow them to better prepare for the final rule.

*Response:* NMFS agrees that the six month extension will facilitate the conversion to sinking groundline in trap/pot fisheries along the Atlantic. As stated in the Regulatory Impact Review (RIR; May 2008) for this action, providing additional time for gear conversion would reduce the possibility of a disruption in fishing effort during the summer and early fall of 2008, which would have an adverse impact on the catch and revenues of affected fishermen. Fishermen would be able to bring their gear into compliance during the winter, when fishing activity slows, fewer traps are in the water, and fishermen typically focus on gear repair and replacement.

*Comment 2:* Many commenters expressed their support for the proposed six month extension (through April 5, 2009) so that fishermen could adjust to current economic conditions (i.e., higher fuel and bait prices, lower purchase prices for lobster) and gain more financial resources to offset the difficulties many are having with purchasing sinking line. Several commenters also believed that the proposed delay is economically imperative for local communities. One commenter noted that the proposed action would allow lobstermen to spread out the cost of purchasing sinking line. Another commenter stated that for those that fish year-round, the extension will allot time to comply without missing fishing days. Other commenters expressed hope that the Federal government will come forth to assist with the expenses endured by each lobsterman affected by the sinking line requirement.

*Response:* NMFS agrees that the delay will assist all Atlantic trap/pot fishermen in fully converting to sinking groundline. Again, as noted in the RIR, trap/pot fishermen would be able to convert their gear over an extended period of time to avoid any potential spike in demand for sinking line, which if it materialized, might temporarily outstrip the capacity of cordage manufacturers, drive up prices, and impair fishermen's ability to comply. This action would also reduce compliance costs for those who have yet to complete the conversion, since more line could be converted when it ordinarily would need to be replaced, avoiding the costs associated with accelerating gear replacement.

*Comment 3:* Many commenters expressed their support for the proposed six month extension (through April 5, 2009) as lobstermen would be able to research and experiment with different types of sinking line to determine what works best (i.e., on hard bottoms) as well as learn how to effectively fish with sinking line to reduce gear loss and safety concerns. One commenter believed that the proposed delay would demonstrate that NMFS understands the practical challenges of the large-scale transition to sinking groundlines.

*Response:* NMFS appreciates fishermen's efforts to continue to phase-in sinking groudline during the delay. NMFS recognizes that the conversion from floating to sinking groundline involves a major reconfiguration of gear involving time and resources.

*Comment 4:* Several commenters noted that providing a 6–month delay in implementation would allow lobstermen to avoid the necessity to switch to fishing singles, which would increase the number of vertical lines in the water, and hence, pose a greater risk to whales.

*Response:* NMFS agrees that the delay will assist all Atlantic trap/pot fishermen in fully converting to sinking groundline. NMFS also recognizes vertical lines as an entanglement risk to large whales and will be continuing to discuss this subject with the ALWTRT.

*Comment 5:* One commenter supported the proposed delay in implementation until April 2009, for Federal waters only.

*Response:* Based on NMFS' monitoring of both the availability of sinking groundline and the progress of

the fishing industry in converting to sinking groundline, NMFS believes an additional six months (to April 5, 2009) for trap/pot fishermen along the Atlantic coast to comply with this requirement is warranted.

*Comment 6:* One commenter noted that the original 12–month implementation period was not enough time to convert all floating groundlines as lobstermen typically only replace a portion of their groundline annually. The commenter also stated that there was a short supply for industry members who wished to purchase compliant gear before the 2008 season and a lack of assurance the line purchased would be compliant under the regulations. Another commenter noted that the marine supplier he coordinates with ran out of steel liner sinking line in April 2008. Several other commenters questioned the availability of sinking line and believed a 6–month delay in implementation would enable rope producers time to increase production and meet industry demands. Some of these commenters believed there would be difficulties with enforcement of the regulation if not enough sinking line had been produced for fishermen to complete the required conversion.

*Response:* NMFS recognizes that the conversion from floating to sinking groundline would expedite a fisherman's routine schedule of line replacement. Based on reasons noted in the proposed rule (73 FR 32278, June 6, 2008) and RIR (May 2008), and comments received, NMFS believes an additional six months for Atlantic trap/pot fishermen to convert to sinking groundline is warranted. NMFS believes that an eighteen month time period (i.e., from the time the final rule was finalized on October 5, 2007, to the new effective date of April 5, 2009) is sufficient time for the Atlantic trap/pot fishery to make the conversion. Manufacturers have indicated to NMFS that an adequate supply of cordage would be available if fishermen continue to convert throughout this time period.

*Comment 7:* Many commenters supported the proposed 6–month delay in implementation as NMFS would have more time to continue working with fishermen to address ongoing issues of implementation and enforcement. One commenter felt that the proposed extension would allow industry to suggest another rule that will cause less financial hardship to fishermen. Other commenters noted that the proposed rule will give the Maine Lobstermen's Association (MLA) and other groups more time to work out a ''conservation equivalency agreement'' to meet the goals of the ALWTRT while ensuring Maine lobstermen the ability to fish. One commenter maintained that the proposed delay would allow NMFS and the ALWTRT time to consider the State of Maine's proposed sink rope exemption for Downeast Maine. A different commenter noted that NMFS, MLA, and Maine Department of Marine Resources (DMR) have been actively engaged in discussions about modifications to the regulations that would allow floating groundline to be used in some additional areas where there is low risk to whales in return for a reduction in endlines; the commenter encouraged NMFS to continue to work with MLA and Maine DMR and use the additional 6 months to craft a compromise on this issue.

*Response:* NMFS believes an additional six months for Atlantic trap/pot fishermen to convert to sinking groundline is appropriate to ensure implementation of this gear modification. However, NMFS does not agree that there is an enforcement concern regarding sinking groundline. The recent ALWTRP final rule (72 FR 57104, October 5, 2007) included modifications to the sinking groundline definition, as well as prohibitions on attaching buoy, toggles or other floatation devices, to assist enforcement of these provisions. Additionally, although it is not NOAA Office of Law Enforcement policy to share enforcement procedures with the public, NOAA is prepared to enforce this requirement. NOAA Office of Law Enforcement relies on its partnership with the U.S. Coast Guard (USCG) and state agencies to monitor compliance with the ALWTRP. NMFS has been in discussions with the Maine DMR on ALWTRP enforcement efforts.

Although the ALWTRT has been discussing possible proposals related to exemptions to the sinking groundline requirement (in exchange for significant reductions in vertical lines) in specific areas these have not yet received even conceptual support by the ALWTRT. If conceptual support were achieved, significant work would remain to develop and agree to details of such a proposal. Any associated modification to the ALWTRP, pending approval, would be conducted through a separate rulemaking action. Thus, those discussions occurring with the ALWTRT are on a separate track and are independent of this action.

*Comment 8:* Several commenters requested the delay be extended to a date later than April 5, 2009. Many of these commenters noted that they fish offshore trawls year-round, and the current proposed delay in implementation would not provide the necessary time for their gear to be converted. Commenters felt that the proposed April 5, 2009, deadline was chosen without consideration for the offshore fleet and the time necessary to convert offshore gear, leaving the proposed rule to serve only one segment of the industry. They believed that a delay until at least December 31, 2009, is necessary for offshore gear due to: (1) the cost of converting offshore gear and the fact that due to current economic conditions fishermen do not have extra money to convert their gear; (2) the time it takes to reconfigure offshore gear (vessels are able to transport no more than two trawls out to the fishing grounds at any one time); (3) the unnecessary safety risks that will be posed to offshore crews if they need to take out more than one trawl at a time during the winter months; (4) the large amount of heavy-duty line required by the offshore fleet, and if that supply will be available; and (5) the necessity of a comprehensive rope recycling program. Many commenters also noted the necessity for Federal funding or the establishment of a financial program to assist them in complying with the sinking groundline regulation. One commenter felt that if financial assistance could not be offered, then the delay should be extended to December 31, 2010.

*Response:* NMFS did consider the Atlantic trap/pot fishery in its entirety when considering whether a delay in the conversion to sinking groundline was warranted. Additionally, NMFS considered other factors as noted in the proposed rule and RIR, such as impacts to large whales, when considering the appropriate delay period. NMFS believes that the additional six months, which would result in a total of 18 months (since the October 5, 2007, final rule) is an adequate time period to convert to sinking groundline for the offshore fleet taking into consideration the points noted above. For example, transporting two trawls a trip over an 18 month period should be adequate time to convert. NMFS has been in touch with gear manufacturers and suppliers who note that there should be a supply of sinking line available if fishermen continue to phase-in sinking groundline during the delay. Additionally, NMFS encourages fishermen to contact the NMFS Gear Research Team (contact information found at *http://www.nero.noaa.gov/whaletrp/plan/gear/index.html*) for information or contacts related to recycling line.

As noted in the preambles to the proposed and final rule, NMFS believes

the six month delay through April 5, 2009, is appropriate and that any further broad-based delay could increase risk based on the seasonal abundance and distribution of large whales along the east coast. Specifically, the highest frequency of right whales in the western Gulf of Maine is April through May whereby at least half of the known population may be seen in this area during that time. Similarly, the highest frequency of right whales generally occurs in the Northern Edge of Georges Bank during June and July (Pace RM III, Merrick RL. 2008. Northwest Atlantic Ocean Habitats Important to the Conservation of North Atlantic Right Whales (*Eubalaena glacialis*). Therefore, NMFS believes that any delay beyond April 5, 2009 would create an increased risk to right whales in the Northeast.

*Comment 9:* Many commenters stated confusion and concern as to how to identify sinking line that complies with NMFS' 1.03 or greater specific gravity standard. They questioned how fishermen can be certain the product they are buying as ''sink rope'' meets the standard set by NMFS. One commenter stated that many lobstermen were unable to change their gear prior to the start of the 2007 fishing year because they did not know what kinds of rope would be deemed sufficient to meet AWLTRP final rule requirements. Other commenters were worried that money already spent on available sinking line may have been wasted, as no one will verify if the line they purchased is compliant or not. Commenters noted that the rope industry does not clearly label its line in a manner to indicate the specific gravity of the line and/or if it is compliant with ALWTRP regulations. Some commenters requested NMFS to provide a clear directive indicating which line(s) comply with the rule; one commenter believed that providing a longer implementation time will enable the Agency to develop clearer standards to determine whether rope will or will not meet the regulation requirements. A different commenter requested a government proven line that has been approved for the specific buoyancy levels.

*Response:* NMFS believes that the elimination of the ''neutrally buoyant line'' term and definition in the ALWTRP regulations will facilitate fishermen understanding the ''sinking'' groundline regulations. For example, industry has wondered whether NMFS will permit the use of ''low profile'' groundline in certain areas (the term ''low profile'' refers to line that does not sink, but would remain in the water column relatively close to the sea floor). Elimination of references to ''neutrally buoyant line'' from the regulations would make clear to fishermen that ''sinking'' groundline is required. In response to requests from the fishing industry and line manufacturers for a clearer definition of sinking line, NMFS developed criteria for establishing a density standard for sinking line and used this criteria to develop the sinking line definition. In addition, NMFS finalized a procedure for assessing the specific gravity of line, which NMFS will use to determine whether a manufactured line meets the accepted density standard. The criteria are available on NMFS' website at *http://www.nero.noaa.gov/nero/hotnews/whalesfr/*. These criteria and procedures were meant to facilitate the manufacture of sinking line. Manufacturers have assured NMFS that they can produce rope that meets the definition of sinking line as mandated by the ALWTRP. Fishermen are required to ensure the line they purchase for their groundline is sinking line, and NMFS encourages fishermen to talk with gear suppliers and/or manufacturers about the available options for line that meets the sinking line requirements. However, NMFS does not expect fishermen to conduct their own specific gravity analyses. Additionally, NMFS does not believe special markings are needed for sinking line as NMFS is confident that fishermen have the ability to easily and confidently purchase sinking line that meets the requirements of the ALWTRP.

*Comment 10:* One commenter stated that lobstermen have not received any information or assistance as to which lines will perform best for their local conditions and they are hesitant to invest in a line that may not work.

*Response:* NMFS has funded research with the states, manufacturers, and industry to address this issue. NMFS' Gear Research Team has worked with numerous fishermen along the Atlantic coast over the years to test sinking line, and find a line that operationally works in their area. Thus, NMFS is aware of many fishermen who use sinking line and encourages industry members to contact the NMFS Gear Research Team (contact information found at *http://www.nero.noaa.gov/whaletrp/plan/gear/index.html*) for contact information of those who have used or tested sinking line in their area to discuss these issues further.

*Comment 11:* One commenter noted that at this time, Rhode Island lobstermen have not received any financial assistance to initiate a rope buyback program. The commenter stated that the state has two dozen vessels using floating line nearshore due to rocky bottom, and that the State is home to the largest offshore lobster fleet, all of which use floating line. Although many fishermen have started to convert, others say they simply can not afford to buy the required line.

*Response:* NMFS believes that the delay will provide more time to enable those fishermen who have not had access to these buyback programs to find the resources to convert to sinking groundline.

*Comment 12:* One commenter felt that current rope buyback programs were occurring at the wrong times of the year, requiring fishermen to bring in their traps during peak fishing periods in order to make an exchange. The commenter suggested the months of January and February for a rope buyback program, as that is when the gear is out of the water.

*Response:* The buyback program in Maine (where this commenter originates) is administered as part of a NOAA Grant. Therefore, we will forward the comment to the grant recipient for consideration.

*Comment 13:* One commenter provided several remarks on the rope manufacturing industry. The commenter noted a rapid increase in the demand for sinking line from the Northeast U.S., roughly concurrent with the implementation of various rules and buyback programs. Although, to date, customer needs have been satisfied (though typical delivery times have been longer than normal) the commenter stated that significant challenges do exist to meet the current demand for sinking line. The commenter maintained that manufacturers are unable to control the sourcing of polyester used in constructing sinking line, as the material is used in other industries and is not always available at a reasonable price. The commenter also stated that rope manufacturers serve a variety of industries and the level of demand from markets outside fisheries may impact the ability of manufacturers to supply product within a reasonable time frame, especially if those outside industries are seasonal. The commenter believed that a sudden surge in demand would result in a temporary shortage and higher rices, and any price change would work quickly through the supply chain, potentially impacting individuals in a manner that would cause difficulties in complying with sinking groundline regulations.

*Response:* NMFS appreciates the comment. As noted in the RIR, those fishermen who have not completed the conversion to sinking groundline are being provided an additional six months, which would help to smooth

any potential spike in demand for sinking line that might temporarily outstrip the capacity of cordage manufacturers, drive up prices, and impair fishermen's ability to comply. Therefore, for this reason and others noted in the proposed rule and RIR, NMFS believes that the delay will allow industry enough time to fully convert and enable manufacturer's to meet the demand for sinking line during this time period. NMFS also encourages fishermen to continue the conversion to sinking line as soon as possible to avoid possible problems described by the commenter.

*Comment 14:* One commenter noted that a variety of products are required to best serve the industry as differing fishing environments and techniques require different designs of rope product. The commenter believed that since the fishing industry is now at a stage where a significant amount of compliant gear is being fished and a greater amount of feedback is expected over the next several months, manufacturers can use this information and make the necessary modifications to their product. The commenter felt that if a particular product is not available, it is conceivable that fishermen will be forced to use a product not well-suited for their needs in order to comply. Using such product could result in a significantly shortened product life-span, and as a result, increased costs and/or reduce a fisherman's ability to maximize landings.

*Response:* NMFS acknowledges that the type of sinking line a fishermen may choose is dependent on many factors (e.g., bottom type, tide). Additionally, NMFS understands that many fishermen have tested various types of sinking groundline in various environments to determine the best line for their operation. NMFS encourages fishermen to continue the conversion to sinking line as soon as possible to help ensure availability of their desired product to avoid possible problems described by the commenter.

*Comment 15:* Many commenters opposed the proposed six month extension (through April 5, 2009), stating that the rationale NMFS used to justify the proposed six-month delay in implementation was inadequate, disingenuous, unjustified, needed to be demonstrated factually, and is contrary to the protection needs of the North Atlantic right whale. Some commenters found the proposed delay to be unwarranted and risky. Commenters believed NMFS had already taken too long to adopt final regulations (a total of 5 years since the previous plan was found to be inadequate) and at least 18 right whale entanglements have been observed during those 5 years (commenters stated that at least 5– percent of the right whale population has been entangled in fishing gear in the time it took to develop the new rules). Commenters noted that NMFS has stated ''the loss of even a single individual [right whale] may contribute to the extinction of the species'', and hence, NMFS cannot casually delay the implementation of a measure necessary to avoid this result. Another commenter noted that past analyses (i.e., in the FEIS [NMFS 2007]) show that the sinking groundline requirement should be implemented by October 5, 2008, and it is inconsistent for NMFS to suggest further delay.

*Response:* Due to the magnitude of the time and resources needed by fishermen to change their gear to sinking and/or neutrally buoyant groundline required by the recent ALWTRP amendment, NMFS provided a one year phase-in period. However, since publication of the final rule, NMFS has monitored both the availability of sinking groundline and the progress of the fishing industry in converting to sinking groundline and determined that both the American lobster fishery and other trap/pot fisheries require additional time to convert to sinking groundline. NMFS believes fishermen will be continually converting their gear before the effective date, which will result in progressive risk-reduction to large whales. Additionally, all other ALWTRP requirements would remain in effect during this period. NMFS believes that this action will result in minimal risk to large whales (see responses to Comments 16 and 18 for additional information regarding the rationale).

*Comment 16:* Many commenters disagreed with NMFS and felt that the proposed delay in implementation would result in further adverse impacts to whales, especially right whales. One commenter felt that the assertions offered for why the delay will not have an impact on whales were wrong and the facts clearly state that whales are indeed put at significant risk by the delay. Commenters questioned how NMFS could substantiate any delay when according to the Maine DMR, at least 26 Dynamic Area Management (DAM) zones had been declared between October-April off the coast of Maine and New Hampshire since 2002. Commenters noted that managers will be left with fewer options to protect whales with the loss of the DAM and the Seasonal Area Management (SAM) Programs in April and October 2008, respectively. Commenters continued to state that NMFS justified the elimination of these programs in the final rule because they would be replaced by the broad-based sinking groundline requirement. One commenter stated that NMFS is allowing risk reduction components of the ALWTRP to expire before other measures are in place to substitute for their loss. Another commenter pointed to the lack of Federal funding for disentanglement operations beginning in 2009. Without the means of either reducing the concentration of gear in the given area (i.e., a continuation of the SAM/DAM programs) or at least attempting to disentangle whales that potentially become entangled, commenters believed populations of North Atlantic large whale species would be placed at greater risk due to the delay. One commenter stated that neither this proposed rule nor its RIR elaborated on what the minimal impacts [to whales] are expected to be.

*Response:* NMFS has made a qualitative assessment that the impacts to large whales from the delay would be minimal based on the various reasons noted in the proposed rule and RIR. In summary, this is based on what NMFS knows about gear and whale distribution, coupled with the conversion to sinking groundline which has already occurred due to buyback programs and expansive special right whale management areas. It is important to reiterate that the DAM program expired on April 5, 2008, when most of the broad-based gear modifications were effective. NMFS believes that the numerous DAM zones that have been established in the Gulf of Maine since the program was implemented in 2002 have facilitated the conversion of lobster trap/pot gear to sinking groundline in these areas. NMFS also believes that the SAM program, the associated areas of which expanded on April 5, 2008, has similarly facilitated the conversion of lobster trap/pot gear to sinking groundline in these areas. However, NMFS acknowledges there has been confusion on the part of some industry, especially is areas that were not impacted by the DAM and SAM programs, as to who is impacted by the new regulations (e.g., on April 5, 2008, other trap/pot fisheries were subject to the ALWTRP including the SAM requirements) and what type of line is required for groundline (see Comment 9 for an example of this confusion). NMFS is not eliminating the broad-based sinking groundline requirement that was required through the October 5, 2007, final rule but is merely delaying the effective date of this by six months and is deleting the ''neutrally buoyant''

line terminology to assist with compliance with these regulations. The majority of the conservation measures included in the October amendment to the ALWTRP are already in place, and NMFS believes that those fishermen who have not already converted will continue to convert throughout the delay.

Regarding the comment on disentanglement, NMFS recognizes the critical importance of removing fishing gear from entangled whales but is faced with decreasing budgets and implementing other pressing priorities. NMFS is seeking more cost-effective options to disentangle whales and to prevent entanglements from occurring.

*Comment 17:* Many commenters felt that the majority of conservation measures in the ALWTRP, which NMFS states will already be in place during the 6–month extension, are inadequate and insufficient to protect whales. Commenters stated that whales will be vulnerable to entanglement in trap/pot gear during the delay as the only protective measure in place would be weak links, which NMFS has already determined are inadequate for risk reduction on their own, and no alternative protections are currently proposed. Commenters noted the entanglement of right whale #3107, which died as result of an entanglement in fishing gear with an unbroken 600lb weak link. One commenter believed it is misleading to state that the majority of ALWTRP conservation measures are already in place. Another commenter stated that any reduction in weak link strength or additional requirements of gear anchoring systems should not be considered significantly protective. Several commenters felt that the groundline requirement was the only ALWTRP requirement that would significantly reduce the line in the water column and therefore the only measure with a probability of further reducing entanglement risks.

*Response:* NMFS disagrees and believes that large whales benefitted and continue to benefit from the numerous modifications to the ALWTRP that were effective April 5, 2008, as well as those that were previously in effect (e.g., restrictions in Cape Cod Bay and Great South Channel Restricted Areas). These modifications included but were not limited to expansion of the ALWTRP requirements in time and space, as well as numerous gear modifications. NMFS also believes that weak links add a level of protection for large whales, and in combination with other mitigation measures, serve as a valuable conservation tool. NMFS does not have evidence to suggest that weak links, when designed and used properly, are ineffective (i.e., NMFS does not have a documented case where a weak link failed to work for the type of entanglement it was designed to address). The rationale for various ALWTRP gear modifications, such as weak link strengths and gear anchoring systems, has been included in previous rulemaking documents. However, the comment related to this is outside the scope of this action and NMFS encourages the commenter to contact the NMFS Gear Research Team (contact information found at *http://www.nero.noaa.gov/whaletrp/plan/gear/index.html*) for further information.

*Comment 18:* Some commenters contested NMFS' statement that ''special right whale management areas have already converted to sinking groundline''. One commenter stated that the special areas in this plan were already in place in a previous plan which was found to be inadequate, and the areas provide little assurance of protection beyond that which was provided in the previous plan. Another commenter noted that the report cited by NMFS (Pace and Merrick 2008) indicated that there are important areas for whales, considered potential high use areas (i.e., Jordan Basin in the spring) that may not be protected under the ALWTRP. Commenters again noted that the DAM program was eliminated in October 2007 in lieu of the October 5, 2008, sinking groundline measures inside and outside SAM areas. One commenter noted that until the sinking groundline requirement comes into effect, the amount of time and area in which sinking groundlines would be required would be less than that which was required under the October 2007 revised regulations. The commenter stated that the ALWTRP is intended for other large whales besides right whales, and many of these other endangered species do not stay within the ''special management areas''. These other species would get little benefit from gear conversion that is confined solely to these areas, whereas they would benefit from imposing regulations throughout the Northeast in October 2008. The commenter also noted that it is only fishermen who ''typically operate'' in these areas that may have converted their gear and other fishermen have the option of not setting their gear until these seasonal restrictions expire or to fish just outside the restricted areas; with the proposed delay, when the SAM program expires, the commenter believed these fishermen (who do not ''typically operate'' in the ''special management areas'') may fish with unmodified gear in 2007–2008.

*Response:* The ALWTRP, and the associated right whale management areas, are not considered inadequate. Rather, NMFS determined that a broad-based management approach focusing on the times and areas where large whales (i.e., not just right whales) are likely to occur would be more protective than the DAM and SAM programs. NMFS believes that the combination of expansive special right whale management areas, in addition to buyback programs, have facilitated the conversion to sinking groundline.

One commenter stated that the Pace and Merrick (2008) document indicated that Jordan Basin is important to right whales in the spring, however, the document notes that this area is important August-October. Regardless, as NMFS has stated, the DAM program has facilitated conversion to sinking groundline. The DAM program was eliminated on April 5, 2008, and not October 2007 as indicated by one commenter. Additionally, the SAM areas were expanded in time and space in April 5, 2008, where sinking groundline was required for all affected gillnet and trap/pot fishermen (including those newly covered by the ALWTRP). The ALWTRP regulations are presently in effect in time and areas where right, humpback, and fin large whales are known to occur. Based on the expansive nature of the right whale restricted areas in the Gulf of Maine, these areas (and the associated sinking groundline restrictions) include many areas where humpback and fin whales have also been sighted. Additionally, once fishermen have invested significant time and costs into converting to sinking groundline, they are unlikely to re-invest additional resources to reconvert for a short six month window.

*Comment 19:* Many commenters disagreed with NMFS' assertion that ''most trap/pot gear is out of the water during a portion of the time period before the broad-based sinking groundline requirements go into effect'' [in April 2009]. One commenter felt there was no information provided to justify this statement and was not aware of any analyses evaluating when, where, or how much trap/pot gear is removed from the water between October and April, nor an evaluation as to whether the gear that is not removed is located in areas where right whales are likely to encounter it. One commenter felt that a reduction in fishing effort is not a viable reason to justify a delay in implementation, especially for right whales. Other commenters noted that

fixed gear fisheries operate year-round in all areas where there are seasonally abundant, large concentrations of right whales, in other areas along the East coast, including New England. One commenter noted that right whales are typically seen off North Carolina in March where sea bass and crab pot fisheries operate in North Carolina and South Carolina waters at this time. Commenters stated that whales, especially right whales, who roam out of their expected wintering grounds will have no protection. Another commenter noted that October, November, and December represent busy fishing months for Maine lobstermen and that the density of vertical lines and groundlines in the water at this time would put whales at risk.

*Response:* The statement that most Atlantic trap/pot gear is out of the water during a portion of the time period before the broad-based sinking groundline requirements go into effect (i.e., April 5, 2009) is based on historic fishing patterns along the east coast. When considering the Atlantic trap/pot fishery in its entirety, the majority of trap/pot effort occurs in the Northeast. However, the delay is occurring before the primary seasonal distribution of large whales in this area (although Cape Cod Bay is a special area for right whales, this area has already converted to sinking groundline during the critical periods) and buyback programs and special right whale management areas have facilitated the conversion to sinking groundline. When focusing on Maine alone, there is less concern that fishing effort may be high during some months of the delay given the consideration of whale distribution coupled with the conversion to sinking groundline that has occurred due to buyback programs and expansive DAM zones in the area. A NMFS analysis also indicates that estimated amounts of groundline and vertical line in Maine waters are at their lowest points during a number of months during the delay. Additionally, 71% of Maine state waters are exempt from the ALWTRP because these areas represent low entanglement risk to large whales. Regarding the mid and south Atlantic, the primary seasonal distribution of large whales occurs during the period of the delay, however, there is less trap/pot gear in the water (i.e., there is less density compared to the northeast) and a NMFS buyback program in this area has facilitated the conversion to sinking groundline.

*Comment 20:* Many commenters disagreed with NMFS and felt that the seasonal distribution of large whales in the Northeast does occur during the proposed extension period. Another commenter asked NMFS to clarify this statement. One commenter felt that it is inaccurate for NMFS to assert that risk is low because the primary seasonal component of large whales occurs after April 2009, and that such an assertion is based on insufficient analyses of available data. The commenter believed NMFS failed to consider data indicating that the risk to endangered large whales occurs in areas larger than typically depicted by the Agency and that the Agency did not consider the best scientific data when determining the potential for risk. Commenters noted that many species of whales remain in U.S. North Atlantic waters during some or all of the proposed extension period. Many commenters maintained that the proposed delay would include all trap/pot fisheries along the east coast at a time when humpback and fin whales are known to forage off the mid-Atlantic and during the migratory times for right whales and others traveling along the east coast. One commenter indicated that the earliest month which humpback whales are likely to be seasonally absent from the Gulf of Maine is January, not October and that individuals of all age classes, including late pregnant females and those due to conceive, are sighted and identified in Gulf of Maine waters from October-December. Commenters also stated that the location of the majority of the North Atlantic right whale population during the fall and spring months is poorly understood and may overlap with whatever fishing effort exists. They also pointed to recent sightings in the central Gulf of Maine as indications that this area is a significant overwintering area. Another commenter stated that right whales are routinely found in Northeast waters during the time of the proposed delay and are often detected acoustically when no sightings have occurred. An additional commenter stated that the largest concentration of right whales occurs in late summer in the Bay of Fundy (after the April 5 date) and in spring in Cape Cod Bay and the Great South Channel (before the April 5 date). Commenters stated that aggregations of right whales are known to move out of critical habitat areas, and right whales ι3314 and ι3346 became entangled in the northern feeding grounds in late fall/early winter, which may be indicative of animals foraging in areas that would be unprotected during the proposed amendment period. One commenter referenced the RIR that accompanied the proposed action, where NMFS stated ''some right whales can be found year round''.

*Response:* Related to the northeast, NMFS considered that the delay would occur before the primary seasonal distribution of large whales (factoring in that although Cape Cod Bay is seasonally important from January through April, sinking groundline is already required there during this time period). This does not mean that large whales will not enter the northeast during the delay (i.e., from October 5, 2008, through April 5, 2009), but rather that they have a stronger seasonal distribution or presence in the northeast after the delay (except Cape Cod Bay as noted above).

The October 2007 ALWTRP amendment implemented modifications that expanded the temporal and spatial distribution of ALWTRP requirements by considering right, humpback, and fin whale distributions. It is important to note that all ALWTRP requirements other than the broad-based sinking groundline requirement will be in effect during the delay (i.e., year-round in the northeast and seasonally in the mid and south Atlantic).

NMFS cited the FEIS (NMFS 2007), as well as Pace and Merrick (2008), when considering the reasons that the delay would cause minimal impact to large whales. The FEIS (NMFS 2007) does include the seasonal distribution of right, humpback and fin whales which was considered by NMFS when developing the current action. Additionally, NMFS considered an updated NMFS document (i.e., Pace and Merrick, 2008) that identified concentrations of right whales. NMFS does not indicate large whales will be absent during the time period of the delay, but considered the seasonal distribution of large whales in conjunction with other factors noted in the proposed rule and RIR (e.g., gear distribution, buyback, groundline requirements that have/are already in effect in various management areas) when stating that there would be minimal risk to large whales and proposing a delay. The FEIS (NMFS 2007) notes that right whales occupy Cape Cod Bay from December onwards, however, sinking groundline is already required in this area from January 15–April 15. According to Pace and Merrick (2008), the Great South Channel is seasonally important to right whales from April-June which is after the delay; this is also supported by the ALWTRP regulations in which more restrictive management measures (e.g., closures) are effective in the Great South Channel from April 1 - June 30.

*Comment 21:* Many commenters questioned NMFS' use of Pace and Merrick (2008) as an appropriate

citation to support justifications of whale distributions. One commenter maintained the publication only used systematic survey data for right whales from 1970–2005 and did not incorporate acoustic data. Commenters also noted that the research did not consider the distribution of other large whales species covered by the ALWTRP, including humpback whales for which takes also exceed their Potential Biological Removal (PBR) level, and that data used for analysis needed to be more recent than 2005 as numerous DAM zones were implemented from 2006–2008 (before the program expired) during months of the proposed delay (91% of these DAM actions occurring during the proposed delay period). One commenter noted that although the Pace and Merrick (2008) report was relevant, it was undertaken for the purpose of evaluating spatial and temporal boundaries of critical habitat for right whales, not the purpose that NMFS attempts to use it for the proposed action. The commenter also stated that the 2008 report calls into question the technical reports by Merrick (2005) and Merrick et al. (2001), which NMFS relied on heavily in its FEIS (NMFS 2007). As NMFS cites the FEIS for information on distribution in this proposed rule, the commenter felt that NMFS had failed to properly consider caveats provided by its own scientists.

*Response:* NMFS believes considering Pace and Merrick (2008), coupled with information contained in the FEIS (NMFS 2007) was appropriate. The Pace and Merrick (2008) document provides information on right whale presence, and provides some indications of the spatial and temporal patterns of right whales in the Gulf of Maine. Although this document was written for a different purpose than for this particular action, it does provide information about right whale presence that is relevant. As with any study of observational data, this study comes with caveats but it does not necessarily preclude the document from being considered and it includes important information about right whale use in the Gulf of Maine. NMFS also acknowledges that acoustic data is important, but at this time the agency uses this detection tool to determine presence and not relative abundance.

*Comment 22:* One commenter thought it was unclear how buyback programs from Maine to North Carolina could be considered a justification for the proposed delay. The commenter stated that NMFS has not specified the source or nature of the data it used to determine the amount of gear that has been exchanged, nor has NMFS explained how the gear already exchanged translates into a particular degree of risk reduction along the east coast such that a delay for unconverted gear is warranted and will pose a minor effect to large whales. Another commenter noted that the fact that a large amount of groundline has already been replaced demonstrates that fishermen have long been aware of the pending requirement. An additional commenter felt that conversion of floating line was not uniform, and as a consequence, stated that it could not be assumed that a similar proportion of gear has been converted in each fishery or sub-region.

*Response:* Since 2005, NOAA has promoted trap/pot gear buyback and recycling programs from Maine to North Carolina with over $3 million in funding appropriated by Congress. This has been done with the assistance of industry and conservation organizations.

NMFS discussed floating groundline buyback programs in Section 7.4.3 of the ALWTRP FEIS (NMFS 2007); the FEIS was referenced in both the proposed rule and RIR. At the time of the FEIS's publication (August 2007), two buyback programs had been implemented. During the fall of 2004 and spring of 2005, the International Fund for Animal Welfare (IFAW), in collaboration with the Massachusetts Division of Marine Fisheries (MA DMF) and the Massachusetts's Lobstermen's Association, conducted a gear replacement program to assist Massachusetts inshore trap/pot lobstermen. Approximately 300,000 pounds (~2,100 miles) of floating groundline was collected and replaced. In mid-January 2006, NMFS conducted a mid-Atlantic gear buyback and recycling program for state and federally permitted trap/pot fishermen in the states of NJ, DE, MD, VA, and NC, in coordination with the National Fish and Wildlife Foundation (NFWF). Nearly 100,000 pounds (~541 miles) of floating groundline was collected.

NMFS noted in the FEIS (NMFS 2007) that the Gulf of Maine Lobster Foundation (GOMLF) had received funding to administer a floating groundline buyback program for state and federally permitted lobster trap/pot fishermen in the state of Maine. The first stage of the ''Bottom Line Project'' was implemented in May of 2007 and approximately 137,590 pounds (~745 miles) of floating groundline were collected. In FY 08, NOAA made an additional $356K available to the GOMLF to further their gear buyback and recycling program within the State of Maine. Since publication of the FEIS (August 2007), Phase II of the GOMLF ''Bottom Line Project'' has been completed (March-May 2008), and approximately 452,890 pounds (~2,450 miles) of floating groundline was collected from four Maine ports. The GOMLF recently announced summer 2008 rope exchange dates and locations: August 2008 in Ellsworth, ME and September 2008 in Rockland, ME.

An additional recent groundline buyback program targeting state and federally permitted New York trap/pot fishermen was implemented in February 2008 on Long Island, New York, by NFWF and the New York State Department of Environmental Conservation. A total of 15,380 pounds (~83 miles) of floating line was collected and an additional future line collection is being scheduled to make use of remaining funds.

Each agency/group administering the buyback program keeps track on the information related to the program. Specific to NMFS' mid-Atlantic buyback program, NMFS determined the amount of line that could fit into a cardboard box prior to the collection which enabled NMFS to record how much line was collected. NMFS therefore estimates that, to date, a total of 1,422 trap/pot fishermen from ME, MA, NY, NJ, DE, MD, VA, and NC have participated in buyback programs and approximately 1,595,755 pounds (~9,116 miles) of floating groundline has been exchanged. With buyback programs ongoing (e.g., projects in NY and ME), NMFS anticipates additional floating groundline will be collected in the future. Although the buyback programs may not be uniformly distributed, the use of floating groundlines in different fisheries or regions are likewise not uniform. Therefore, NMFS believes a valuable entanglement risk reduction has been provided for large whales in the areas where the gear buyback efforts have occurred.

*Comment 23:* One commenter asked why proposals such as a more narrowly focused, targeted delay, a limited deferral of enforcement, or a ''bye'' for fishermen that can verify that an order for sinking line has been submitted, were not contemplated. Another commenter stated that NMFS could choose an alternative that provides for flexibility in enforcement while at the same time provides the greatest protection for whales. The commenter suggested NMFS to keep the October 2008 deadline for all aspects of the ALWTRP and then use a ''rebuttal presumption'' that it is feasible and appropriate for fishermen to comply. If a fisherman is subject to an enforcement action, the burden could be placed on

that individual to show why it was not feasible and/or appropriate for them to comply by October 2008. This would require the agency to set a cut off date by which the affected fisherman would have submitted their orders to known gear manufacturers. If a fisherman without compliant gear is able to document that they submitted their order before June 6, 2008 (or some other date showing a good faith effort by fishermen to comply), then that fisherman could avoid a penalty.

*Response:* NMFS believes that the proposals the commenter suggested cannot be feasibly enforced or implemented. NMFS believes this final action is the best option to ensure compliance with the broad-based sinking groundline requirement with minimal risk to large whales.

*Comment 24:* One commenter stated that if NMFS does move forward with the delay, then the Agency should encourage fishermen to use that time to ensure their gear is 100% compliant with the new implementation deadline and that there will be no more delays or excuses as to why any fishermen have failed to comply. The commenter noted that some lobstermen have made comments in the media that they believe the delay will provide an opportunity to implement an alternative solution to sinking lines in Maine before April 2009. The commenter maintained that even if a Maine working group recently convened were to reach an agreement, the full ALWTRT would need to be consulted and a new rulemaking process initiated, and NMFS would not be able to finalize rulemaking to implement an alternative before April 2009. The commenter believed that NMFS needs to send a clear message to lobstermen that they need to take swift action to convert their gear even with the prospect of an alternative to sinking line.

*Response:* NMFS will be distributing a small entity compliance guide to affected fishermen to notify them of the new broad-based sinking groundline deadline (April 5, 2009), as well as the removal of the ''neutrally buoyant line'' term and definition. NMFS will also clarify that the removal of the ''neutrally buoyant line'' term and definition does not change what NMFS is requiring fishermen to use for their groundline (i.e., line that has a specific gravity greater than or equal to 1.030, and, for groundlines only, does not float at any point in the water column). Although the ALWTRT has been discussing possible proposals related to exemptions to the sinking groundline requirement (in exchange for significant reductions in vertical lines) in specific areas, these have not yet received even conceptual support by the ALWTRT or NMFS. If conceptual support were achieved, significant time would be needed to develop and agree to details of such a proposal. Any associated modification to the ALWTRP, pending approval, would be conducted through a separate rulemaking action. Thus, those discussions occurring with the ALWTRT are on a separate track and are independent of this action.

*Comment 25:* Several commenters believed that fishermen have already had plenty of time to convert their gear within the original 12–month delay in implementation, and questioned why fishermen did not take action to convert their line last winter when their gear was out of the water.

*Response:* Confusion over the type of line the ALWTRP regulations require and debate over potential changes to the regulations have slowed the commercial fishing industry's progress in converting to sinking groundline. For example, trap/pot fishermen have inquired about the definition of low profile groundline (a line that does not sink, but loops some distance above the ocean bottom lower than floating line), and have asked NMFS for clarification on whether neutrally buoyant line is the same as low profile line. The conversion process has also been slowed by confusion over which trap/pot fisheries are now subject to ALWTRP regulations. Prior to 2007, the only trap/pot fishery subject to ALWTRP requirements was the American lobster fishery. The amendments to the ALWTRP published in October 2007 expanded the scope of the plan to other trap/pot fisheries. In light of this situation, NMFS removed the ''neutrally buoyant line'' term from the regulations (whereby only ''sinking line'' remains) to facilitate understanding of the regulations and delayed the effective date of the sinking groundline requirement for trap/pot fisheries from October 5, 2008, to April 5, 2009, to ensure compliance with these requirements.

*Comment 26:* Many commenters believed the proposed action is unnecessarily broad in scope and will relax requirements already in place and being used by many New England fishermen (i.e., fishermen who converted a portion of their gear due to SAM and DAM regulations, and/or MA state lobstermen). Several commenters were concerned fishermen may revert to the use of floating line in the absence of previous requirements for sinking line in certain areas and one commenter failed to see how this situation justified the proposed deferral. Another commenter stated that fishermen who have yet to make the conversion to sinking groundlines, or that were planning to make the conversion before October, are now being told they have no obligation to use sinking line during the delay.

*Response:* NMFS believes an extended phase-in period is warranted along the Atlantic coast to enable trap/pot fishermen to rig their gear with sinking groundline, but believes fishermen will be continually converting their gear up until the effective date, which will result in progressive risk-reduction to large whales. Additionally, once fishermen have invested significant time and costs into converting to sinking groundline, they are unlikely to reinvest additional resources to reconvert their gear for a short, six-month window. See response to Comment 25.

*Comment 27:* Some commenters felt that although NMFS justified the proposed delay in implementation based upon confusion and/or an inability to comply, the real reason behind the proposed delay is to allow the industry time to undermine the protective measures in the October 2007 ALWTRP final rule. Commenters cited a June 3, 2008, MLA press release, where the group states that the delay would allow them time to ''work to find a whale protection plan that is better suited for [their] area'' and would allow them to ''submit an alternative proposal that would exempt certain additional areas from the sinking line rule''. Several commenters also noted that the Maine senatorial delegation issued a press release shortly before NMFS published its proposal to delay implementation, stating that implementation would be delayed and the delay would provide ''an opportunity to improve the rules that will ultimately go into effect'' (Snowe 2008). Commenters believed that such statements indicate the intent by the Maine lobster industry to further delay their compliance and to work to undermine and further modify the protections of the October 2007 ALWTRP rule. Commenters also believed that NMFS' rationale appeared to accommodate the trap/pot industry's desire to further amend the final rule.

*Response:* Confusion over the type of line the regulations require and debate over potential changes to the regulations have slowed the commercial fishing industry's progress in converting to sinking groundline. The conversion process has also been slowed by confusion over which trap/pot fisheries are now subject to ALWTRP regulations. In light of this situation, NMFS is delaying the effective date of the sinking

groundline requirement for trap/pot fisheries from October 5, 2008, to April 5, 2009.

Although the ALWTRT has been discussing possible proposals related to exemptions to the sinking groundline requirement (in exchange for significant reductions in vertical lines) in specific areas these have not yet received even conceptual support by the ALWTRT. If conceptual support were achieved, significant work would remain to develop and agree to details of such a proposal. Any associated modification to the ALWTRP, pending approval, would be conducted through a separate rulemaking action. Thus, those discussions occurring with the ALWTRT are on a separate track and are independent of this action. See response to Comment 7 for further clarification.

*Comment 28:* One commenter believed that most of the concerns about the sinking line requirement were coming from Maine fishermen. Although the MLA asserts that Maine state waters are low risk to whales, the commenter noted that NMFS' own data show whales have become entangled in lobster gear in Maine state waters. Specifically, the commenter stated that a number of documented large whale entanglement cases were from the Maine inshore lobster industry and these numbers likely underestimate all the entanglements.

*Response:* The majority of the east coast lobster trap/pot fishery, is off the state of Maine. Thus, it is not surprising that much of the confusion has occurred in the Northeast. However, there has been confusion in other areas as well. NMFS acknowledges that some entanglements have occurred in gear originally set in Maine state waters; therefore, there are portions of Maine waters that are subject to the ALWTRP regulations.

*Comment 29:* Several commenters questioned why NMFS is not proposing a delay for the gillnet fishing industry, as NMFS began to regulate the Northeast anchored float gillnet and drift gillnet fisheries under the October 5, 2007, final rule (72 FR 57104), in addition to the other new fisheries. The commenters requested that NMFS provide an explanation as to why the regulated gillnet fisheries are apparently capable of complying with the sinking groundline requirement, the limited availability of sinking groundline does not apply to this industry, and there is no confusion as to what constitutes sinking groundline within the gillnet fishery (but all of the above applies to regulated trap/pot fisheries).

*Response:* It is important to note that the newly regulated Northeast anchored float and drift gillnet fisheries represent much lower effort than the Northeast sink gillnet fishery which has been regulated previously. Additionally, the Northeast sink gillnet fishery in turn represents much lower effort compared to the Atlantic trap/pot fisheries. NMFS believes that the gillnet industry does not require the same amount of time and resources to change over their groundline compared to the trap/pot industry. The gillnet fishery is smaller in size and does not have the length of groundline compared to the trap/pot fishery (NMFS, 2007). Thus, NMFS believes that the gillnet fishery can convert its groundline to sinking line in a shorter amount of time. Additionally, the gillnet fishery is accustomed to using rope that sinks to the bottom (i.e., leadline) versus the trap/pot fishery. Gillnet fishermen have therefore had more experience using line that lies on the bottom of the ocean floor.

*Comment 30:* One commenter questioned NMFS' statement that the delay is needed to avoid a spike in demand which could outstrip the capacity of rope manufacturers and that NMFS has monitored the availability of line. The commenter stated that NMFS has failed to explain why/how the initial 12–month phase-in was inadequate nor has the Agency provided the results of its purported ''monitoring'' or document that supply has been insufficient over the last 9 months since the publication of the final rule.

*Response:* Those who have yet to complete the conversion to sinking rope would be allowed under this final rule to continue this process for an additional six months. This would reduce compliance costs, since more line could be converted when it ordinarily would need to be replaced, avoiding the costs associated with accelerating gear replacement. This would also help to smooth any spike in demand for sinking line, which could outstrip the capacity of cordage manufacturers, drive up prices, and impair fishermen's ability to comply. See Comment 13 which was written by a manufacturer and which supports NMFS' statements on demand and availability issues. In the October 2007 final rule, NMFS allowed a twelve month phase-in of the sinking groundline requirement based on the magnitude of this requirement. However, as noted in the Record of Decision (ROD) for the October 2007 amendments to the ALWTRP (72 FR 56335, October 3, 2007), NMFS committed to continue to monitor the supply and situation of available rope through discussions with industry during the upcoming year. Since publication of the final rule, NMFS has monitored both the availability of sinking groundline and the progress of the fishing industry in converting to sinking groundline. Through these efforts, NMFS has determined that both the American lobster fishery and other trap/pot fisheries require additional time to convert to sinking groundline. This has been determined through various forms of NMFS communication (e.g., meetings, phone calls) with stakeholders, including manufacturers, gear suppliers, and industry members.

*Comment 31:* Many commenters noted a potential mistake in the preamble to the proposed rule within the list of reasons NMFS supplies to justify how the impact of the proposed extension would be minimal to large whales. The fifth justification reads, ''gear buyback programs from Maine to North Carolina that have assisted in the conversion of sinking groundline for lobster trap/pot fisheries have already removed a large amount of sinking groundline from the ocean '' Commenters indicated that the word ''sinking'' should have actually read ''floating''. One commenter noted that as written, the statement appears to justify rejecting rather than adopting the delay.

*Response:* In the preamble to the proposed rule, the statement above should have read ''gear buyback programs from Maine to North Carolina that have assisted in the conversion of sinking groundline for lobster trap/pot fisheries have already removed a large amount of floating groundline from the ocean '' This represented an error during writing the preamble to the proposed rule only, and does not mean the justification should be rejected.

*Comment 32:* Many commenters disputed NMFS' statement that there was confusion within the industry, especially in the Northeast. Commenters believed there was no information provided to evaluate the extent of this confusion, whether it was based on terminology in the October 2007 regulations, and why a simple clarification would not rectify the confusion. Commenters felt the stated confusion does not exist because: (1) thousands of comments have been received from the lobster industry focused on the groundline requirement, indicating that fishery participants have clearly understood what has been proposed for several years; (2) NMFS has invested ample time and effort in advising and preparing fishermen for implementation of this requirement through the development and distribution of extensive outreach materials, including the distribution of

permit holder letters which detailed requirements for compliance (3) NMFS has two fisheries liaisons to bring information about the rule to local fishermen; (4) although the final rule added new fisheries under the ALWTRP, it was clearly stated which new fisheries were added and the proposed rule also contained the same list of fisheries; (5) several of the fisheries are represented on the ALWTRT, and hence, would be aware of pending regulations; (6) the definition of sinking groundline has not been substantively changed since regulation began in 1997 and NMFS has developed a flyer that describes how the Agency will determine the specific gravity of rope; (7) several fishing industry trade publications have written articles on meetings for fishermen about the upcoming changeover of line, funds available and listed manufacturers who offer compliant line from Maine through the mid-Atlantic (CFN 2006, FV 2006); (8) in January, 2007, the State of Massachusetts required all lobstermen to convert to sinking groundlines, using the same specifications as NMFS, and no confusion resulted; and (9) fishermen have been required to convert to sinking line since 2003 due to SAM and DAM regulations. One commenter questioned why NMFS finds it necessary to defer implementation of the rule outside the Northeast if the majority of the confusion is in the Northeast. One commenter believed it was unacceptable for large whales to bear the burden of the Agency's failure to clearly communicate the regulatory requirements of the ALWTRP.

*Response:* Based on the actions commenters note above, NMFS believes numerous fishermen have made the conversion to sinking groundline. However, regardless of the numerous efforts NMFS had undertaken, confusion with the requirements has continued to occur ranging from which type of line is required to which fishermen are impacted and where. The October 5, 2007, amendment to the ALWTRP represented significant modifications to the regulations. Fishermen from Maine through Florida were affected and the rule introduced several new requirements for both fishermen previously regulated under the plan as well as numerous fishermen regulated for the first time by the October 2007 final rule.

Comments on NMFS' Mandates

*Comment 33:* Several commenters stated that they believed the proposed delay in implementation would be in violation of the Marine Mammal Protection Act (MMPA). Commenters explained that according to the MMPA, when the take of a species/population exceeds PBR, it is afforded a take reduction plan and that, under this specification, the death of right whale #3107 should have resulted in a new ALWTRP final rule by 2004, however the final rule was not published until October 2007, only after legal action was taken. One commenter asserted that delaying implementation of the 2007 final rule violates the strict, statutory deadlines of the MMPA requiring the prompt development and issuance of a final rule as well as the timely implementation of that rule. Also, some commenters noted that the deaths of right and humpback whales continue to exceed PBR and that the purpose of a take reduction plan is to ''reduce, within six months of its implementation, the incidental mortality or serious injury'' of marine mammals ''to levels less than'' PBR levels (16 U.S.C.1387(f)(2)). One commenter believed that NMFS has been out of compliance with the MMPA's deadlines for development, approval, and implementation of the revised ALWTRP for several years following the death of right whale #3107.

*Response:* The MMPA sets up a process for developing and issuing take reduction plans, monitoring the plans regularly, meeting with the take reduction teams regularly, and making amendments if necessary to meet the goals of the MMPA. NMFS has been acting consistent with that process. The first ALWTRP was issued in 1997, and NMFS has modified the ALWTRP numerous times since with input from the ALWTRT to further these goals of the MMPA to reduce serious injury and mortality of large whales in commercial fisheries.

*Comment 34:* Some commenters stated that they believed the proposed delay would be in violation of the Endangered Species Act (ESA). Under the ESA, NMFS is required to ensure that actions authorized by the Agency are not likely to jeopardize endangered and/or threatened species, and one commenter believed under these provisions, NMFS can not legally authorize the take of a single animal. Two commenters stated that, in the 2001 ESA Section 7 consultations, NMFS identified SAM/DAM programs as Reasonable and Prudent Alternatives (RPAs) to jeopardy for right whales and that NMFS would be in violation of the ESA if current whale protections required under that consultation, including SAM and DAM, were to be phased out before the sinking groundline requirement was implemented. The commenters requested that, if the Agency moves forward with the delay, then the SAM/DAM programs should be reinstated during the time of the delay, for all areas. Two commenters maintained that, although NMFS stated the delay would pose ''minimal'' risk, the Agency did not state if it meets the legal standards of the ESA (or the MMPA) to ensure that no right whales will be taken.

*Response:* The proposed delay in the effective date for the use of sinking line on pot/trap gear for all pot/trap fisheries does not violate the ESA. NMFS considered the effects to ESA-listed species under NMFS jurisdiction as a result of the proposed action in accordance with Section 7(a)(2) of the ESA. NMFS concluded that a delay in the effective date of the requirement to use sinking line will delay by six months the benefit to ESA-listed cetaceans anticipated as a result of the October 5, 2007 final rule (72 FR 57104) requiring the broad-based use of sinking groundline. However, the proposed action to delay the use of sinking groundline for pot/trap fisheries will not, in itself, cause harm to ESA-listed cetaceans. Since switching to sinking line is neither likely to benefit or harm ESA-listed sea turtles, shortnose sturgeon, or Gulf of Maine Distinct Population Segment of Atlantic salmon, a delay in the effective date for the use of sinking line on pot/trap gear is also not expected to benefit or harm these species.

NMFS has reinitiated ESA Section 7 consultation on the continued authorization of the federal lobster fishery as well as the multispecies, monkfish, and spiny dogfish fisheries given the changes to the ALWTRP, specifically the elimination of the DAM and SAM programs. Those consultations are in-progress.

As noted in the recent ALWTRP final rule (72 FR 57104, October 5, 2007; 73 FR 19171, April 9, 2008) the DAM and SAM programs were being replaced with a broad-based management scheme. Specifically, when the majority of the broad-based gear modifications became effective on April 5, 2008, the DAM program was eliminated. Also, the final rule eliminated the SAM program effective October 5, 2008 when the broad-based sinking/neutrally buoyant groundline requirement was to be effective. However, the proposed action does not change the requirement to use sinking groundline on pot/trap gear in areas where this modification is already required by the ALWTRP (either previously or as of April 5, 2008), such as SAM and the Cape Cod Restricted Areas. Broadening the DAM and SAM

gear modifications in time and space to all gillnet and trap/pot fisheries is more protective to large whales than the limited temporal and spatial DAM and SAM programs required in the RPA, even given the delay in effective date for the use of sinking line on pot/trap gear. In addition, NMFS has determined that large whales will be minimally effected by the delay in effective date given that: (1) the majority of the conservation measures included in the amendment to the ALWTRP would already be in place; (2) fishermen in special right whale management areas have already converted to sinking groundline as described above; (3) most trap/pot gear is out of the water during a portion of the time period before the broad-based sinking groundline requirements go into effect; (4) the primary seasonal distribution of large whales in the Northeast does not occur during the proposed delay time period (Pace and Merrick 2008; NMFS 2007) (where the majority of confusion has been reported to have occurred); and (5) gear buyback programs from Maine to North Carolina that have assisted in the conversion of sinking groundline for lobster trap/pot fisheries have already removed a large amount of sinking groundline from the ocean.

*Comment 35:* One commenter asserted that delaying the implementation of the 2007 sinking groundline requirement will be in violation of the settlement agreement in HSUS v. Gutierrez (Civ. No. 07–0333). The commenter maintained that if NMFS decides to amend its ''final'' ALWTRP rule before it is ever implemented, the agency will violate the terms of the settlement which required the submission of an actual final rule on October 1, 2007. According to the commenter, the settlement agreement also requires the agency to either seek parties' consent or an order of the court if it wishes to modify the date upon which the final rule is due, and the commenter believed NMFS has failed to comply with these procedures.

*Response:* NMFS believes that the settlement agreement was fully complied with because the agreement only addressed publication of the final rule, and the settlement was silent with respect to anything else, including any delay of any effective dates. Specifically, the settlement agreement required NMFS to submit a final rule to the **Federal Register** by October 1, 2008, which NMFS did. The agreement does not obligate NMFS in any way regarding the substance of that final rule (or what would happen after the final rule was issued).

*Comment 36:* One commenter believed that a categorical exclusion (CE) for this proposed rule is not appropriate under the National Environmental Policy Act (NEPA) and/or NOAA Administrative Order 216–6 (NAO 216–6) and hence, NMFS is not relieved of its NEPA obligations. The commenter maintained that pursuant to NEPA, the Agency must either prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) to consider the ''significant'' impacts of this proposal. The commenter believed NMFS could not argue the proposal to extend the implementation deadline was the ''same'' as any other previous action where NMFS has already demonstrated no ''significant impacts'' would result, nor has the agency considered the impact of removing SAM and/or DAM programs without substituting broad-based gear requirements. The commenter states that by issuing an EIS for the October 2007 ALWTRP amendment NMFS concluded implementing the ALWTRP would cause ''significant impacts,'' and therefore NMFS could not now justify its decision that the delay would not have ''significant impacts''. To further demonstrate the inappropriateness of a CE and how the proposed action would have ''significant impacts'', the commenter listed several factors defined under 40 CFR 1508.27 and believed the following: (1) the proposed delay will be highly controversial with the public, as is the science NMFS is using to supports its CE determination; (2) there are questions regarding the data and science NMFS is relying on; (3) there may be a cumulatively significant impacts on the environment from the delay; (4) a delay in implementation will affect three endangered species (right, humpback, and fin whales), and NMFS' **Federal Register** notice does not mention the species or their status; and (5) the proposed delay will violate the MMPA's deadlines.

*Response:* NMFS determined that this action is categorically excluded from the requirement to prepare an EA or EIS in accordance with sections 6.03a.3(a) and 6.03c.3(d) of NAO 216–6. NMFS added clarification text to the ''Classification'' section of the proposed rule to relate each section to the associated action being considered, and expands upon the justification here. Under section 6.03a.3(a) of NAO 216–6 the revision includes a delay amendment that ''will hold no potential for significant environmental impacts.'' Specifically, NMFS has determined that the impact on large whales from this delay would be minimal (see response to Comment 34 below for information on the rationale). Additionally, NMFS determined that a delay in the effective date of the requirement to sinking line will delay the benefit afforded by this change for six months, but will not, in itself, cause harm to ESA-listed cetaceans. Additionally, under section 6.03c.3(d) of NAO 216–6 this amendment would will facilitate enforcement efforts. Specifically, this action will help to clarify the intent of the agency with respect to the type of sinking line to purchase and to aid in enforcement of the current regulations.

This action does not trigger the exceptions to categorical exclusions listed in NAO 216–6, Section 5.05c, because it:

(1) Does not involve a geographic area with unique characteristics. The Atlantic coast includes many diverse characteristics;

(2) Is not the subject of public controversy based on potential environmental consequences. This action is not scientifically controversial (see response to Comment 37 below);

(3) Does not involve uncertain environmental impacts or unique or unknown risks. See the biological information summarized in the paragraph above, as well as in the proposed rule and RIR;

(4) Does not establish a precedent or decision in principle about future proposals. See responses to Comments 23 and 39 with regards to other proposals;

(5) Does not result in cumulatively significant impacts. NMFS determined that a delay in the effective date of the requirement to sinking line will delay the benefit afforded by this change for six months, but will not, in itself, cause harm to ESA-listed cetaceans. See the biological information summarized in the paragraph above, as well as in the proposed rule and RIR. Also, as noted in NMFS Notice of Intent (NOI) to conduct an EIS (68 FR 38676, June 30, 2003), this EIS was originally intended to analyze impacts to the environment of different management alternatives that would finalize the SAM program. However, due to continuing large whale entanglements in fishing gear since the publication of the SAM interim final rule, NMFS determined that additional modifications to the ALWTRP were needed. Therefore, the notice announced NMFS' intent to change the scope of the EIS and consider more alternatives for possible amendments to the ALWTRP. Thus, the rationale for the EIS as noted in the NOI was not related to significance but rather expanding the scope of the ALWTRP modifications to

consider. This present action is not as broad in scope as the October 5, 2007, ALWTRP amendment for which a FEIS (NMFS 2007) was conducted and all impacts on the human environment analyzed. This final action represents an ALWTRP amendment that is much more limited in scope and solely represents a 6–month delay of a requirement and deletion of a definition. Additionally, it is important to note that issuing an EIS under NEPA does not mean that an action is significant; and

(6) Does not have any adverse effects upon endangered or threatened species or their habitats. NMFS determined that a delay in the effective date of the requirement to sinking line will delay the benefit afforded by this change but will not, in itself, cause harm to ESA-listed cetaceans. Therefore, if there are no adverse effects expected from this action then there are also no significant adverse impacts (See additional biological information summarized in the paragraph above).

*Comment 37:* One commenter cited *Hawaii County Green Party* v. *Evans*, where the Northern District of California refused to allow NMFS to issue a CE when amending a scientific research permit, stating that NMFS may not issue a CE if ''any of the six exceptions for CEs apply''. The court found NMFS could not issue a CE for the research permit because legitimate public controversy regarding the permit existed. As the commenter felt this proposed action is the subject of public controversy, they also believed a CE is not appropriate.

*Response:* The cited case is an unpublished decision, and dealt with a scientific research permit amendment issued under Section 104 of the MMPA. This final action is an amendment to a take reduction plan (i.e., a management plan), where a CE is appropriate as the six exceptions do not apply. Specifically, related to the exception for public controversy, under NEPA this is only meant for scientific controversy which NMFS has determined is not applicable this action. The scientific information cited for this rulemaking action is based on information in the FEIS (NMFS 2007), as well as Pace and Merrick (2008). Although the rulemaking that the FEIS supported was controversial, NMFS does not consider the underlying scientific data controversial. Additionally, NMFS does not consider the Pace and Merrick (2008) document to be scientifically controversial.

*Comment 38:* NMFS cites sections 6.03a.3(a) of NAO 216–6 which allows CEs for certain ''management plans'' and 6.03c.3(d) which allows CEs for certain ''administrative'' programs. One commenter believed that none these CE categories were applicable. The commenter stated that 6.03a.3(a)'s authorization of a CE is limited in scope, and although NAO 216–6 does allow CEs to be issued for some ''plan amendments'', it specifically requires in 6.03a.3(a) that all ''plan amendments not requiring an EIS must be accompanied by an EA unless they meet the criteria of a CE in section 5.05b''. The commenter maintained that NMFS' proposed delay does not meet the criteria in 5.05b (1) (same action previously determined to have no significant impact) or 5.05b (2) (does not have significant impact under the significance factors in 40 CFR1508.27), and accordingly, the proposed amendment ''must be accompanied by an EA''. The commenter also stated that in section 6.03a.3(b), a specific list of ''plan amendment'' actions that warrant a CE are given; however, NMFS does not and could not claim that any of these actions apply. The commenter maintained that section 6.03a.3(b) is inapplicable, stating that NMFS can not argue that the delay in implementation of this measure is a ''minor'' or ''technical'' change to the plan nor that the delay or implementing the delay without extending SAM/DAM or substituting new protection measures would have no effect (6.03a.3(b)(1)). The commenter believed that section 6.03c.3(d) also does not apply to the proposed action, as NMFS can not justify a 6–month delay of implementation as an ''administrative or routine'' function under this section. The commenter maintained that the proposed rule is a substantive change to the ALWTRP final rule and will have the effect of delaying implementation of critical protection measures for endangered whales. The commenter felt it was unclear which of the administrative programs listed in section 6.03c.3 (d) NMFS would believe the proposed amendment falls into. As NMFS states that extending the implementation date will ''facilitate enforcement efforts'' the commenter found it unclear if NMFS was suggesting, through this statement, that the delay is exempt under section 6.03c.3 (d) as an ''enforcement operation'', and if so, the commenter requested the Agency to explain how extending the implementation deadline has any relationship to facilitating ''enforcement''. The commenter went on to assert that ''enforcement operations'' in 6.03c.3(d) was intended to cover ''administrative'' enforcement decisions, not broad, substantive, rulemaking decisions regarding compliance dates. Lastly, the commenter stated that NAO 216–6 contains a specific section governing NEPA actions for MMPA-related decisions, and that according to section 6.03f.1, this ''take reduction plan amendment'' requires require an EA, and hence, NMFS is not authorized to issue a CE for the proposed action.

*Response:* NMFS has determined that this final rule constitutes a change to a management plan where a CE is appropriate under section 6.03a.3(a) of NAO 216–6. Section 6.03f.1. of NAO 216–6 relates to the issuance of take reduction plans between marine mammals and commercial fisheries, and not necessarily amendments. NMFS did conduct an EA on the original implementing regulations to the ALWTRP in 1997. It was never NMFS' intent for the implementation of the six month delay to be labeled as ''administrative'' or as an ''enforcement operation≥; thus, NMFS relied upon section 6.03a.3(a) of NAO 216–6 for the six month delay.

NMFS used section 6.03c.3(d) for the portion of this action of deleting the term ''neutrally buoyant line'' in the October 5, 2007, final rule to facilitate enforcement efforts. In the October 5, 2007, final rule, NMFS included both the terms ''sinking'' and ''neutrally buoyant'' line, with identical definitions, in an attempt to include familiar industry terms and assist in the understanding of the regulations. However, industry feedback since the final rule published indicates that using two terms has led to confusion and resulted in some fishermen not understanding what type of line is required for the groundline. Additionally, trap/pot fishermen have inquired about the definition of low profile groundline (a line that does not sink, but loops some distance above the ocean bottom lower than floating line), and have asked NMFS for clarification on whether neutrally buoyant line is the same as low profile line. Therefore, in order to ensure clarity regarding the groundline requirement, this action would remove all references to the term ''neutrally buoyant line'' from the regulations (whereby only ''sinking line'' would remain) to facilitate both industry understanding of the regulations and enforcement efforts of this requirement. Therefore, this change is for both clarification of the regulations for fishermen and to facilitate enforcement. However, NMFS also believes that section 6.03a.3(b)(2) could also have been cited based on this being a minor technical change to a management plan. It is also important to clarify that NMFS did not rely on

section 6.03a.3(b)(1) for the CE. See response to Comment 36 which also addresses comments on NAO 216–6. See response to Comment 34 for information on the elimination of the SAM and DAM programs.

*Comment 39:* One commenter noted that no other alternatives were considered in the proposed rule.

*Response:* Under NEPA, alternatives are not required when a CE is issued.

Comments on Removal of ''Neutrally Buoyant Line'' and Its Associated Definition

*Comment 40:* Many commenters supported the proposed removal of the term ''neutrally buoyant line'' and its associated definition from the ALWTRP regulations. Commenters agreed with NMFS that the deletion of this term will avoid potential conflict within the regulations, ensure a clearer understanding among fishermen and management, and assist in enforcement efforts. One commenter stated that the proposed change would not alter existing requirements and could reduce confusion. Another commenter agreed that the proposed deletion will eliminate some of the confusion within the industry as to which rope is legal to fish with under the ALWTRP.

*Response:* NMFS agrees with the comments.

**Classification**

This final action is categorically excluded from the requirement to prepare an Environmental Assessment in accordance with sections 6.03a.3(a) and 6.03c.3(d) of NAO 216–6. Specifically, under section 6.03a.3(a) of NAO 216–6 the revision includes a delay amendment that ''will hold no potential for significant environmental impacts,'' and under section 6.03c.3(d) of NAO 216–6 the revision includes removal of the ''neutrally buoyant line'' term and definition which would will facilitate enforcement efforts. This action does not trigger the exceptions to categorical exclusions listed in NAO 216–6, Section 5.05c; thus, a categorical exclusion memorandum to the file has been prepared.This final rule has been determined to be not significant for the purposes of Executive Order 12866.

This final rule does not contain a collection of information requirements subject to the Paperwork Reduction Act (PRA).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

NMFS has determined that this final action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. The proposed rule was submitted to the responsible state agencies for review under section 307 of the Coastal Zone Management Act. The following states agreed with NMFS' determination: New Hampshire, Rhode Island, New Jersey, Pennsylvania, Delaware, Virginia, and Georgia. Maine, Massachusetts, Connecticut, New York, Maryland, North Carolina, South Carolina, and Florida did not respond, therefore, consistency is inferred.

This final rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed rule to the appropriate official(s) of affected state, local, and/or tribal governments. Letters were sent to officials in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, Delaware, North Carolina, South Carolina, Georgia and Florida. No concerns were raised by the states contacted; hence, NMFS will infer that these states concur with the finding that the proposed regulations for amending the ALWTRP were consistent with fundamental federalism principles and federalism policymaking criteria.

**References**

NMFS. 2007. Final Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan: Broad-Based Gear Modifications. Prepared by: Industrial Economics, Inc. and NOAA's National Marine Fisheries Service. Northeast Region.

Pace, Richard M. III, and Merrick, Richard. 2008. Northwest Atlantic Ocean Habitats Important to the Conservation of North Atlantic Right Whales. Northeast Fisheries Science Center Reference Document 08–07. 32 pp.

**List of Subjects in 50 CFR Part 229**

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 25, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

## PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for 50 CFR part 229 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

■ 2. In § 229.2, the definition ''Neutrally buoyant line'' is removed and the definition of ''Sinking line'' is revised to read as follows:

**§ 229.2 Definitions.**

* * * * *

*Sinking line* means, for both groundlines and buoy lines, line that has a specific gravity greater than or equal to 1.030, and, for groundlines only, does not float at any point in the water column.

* * * * *

■ 3. In § 229.32, revise paragraphs (a)(4), (c)(2)(ii)(D), (c)(2)(ii)(E), the first sentence of paragraphs, (c)(5)(ii)(B), (c)(6)(ii)(B), (c)(7)(ii)(C), (c)(8)(ii)(B), (c)(9)(ii)(B), (d)(6)(ii)(D), (d)(7)(ii)(D), (i)(3)(i)(B)(*1*)(*i*), (i)(3)(i)(B)(*2*)(*i*), and the second sentence of (d)(1)(i) to read as follows:

**§ 229.32 Atlantic large whale take reduction plan regulations.**

(a)* * *

(4) *Sinking groundline exemption.* The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking line if their groundline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m) (as shown on NOAA charts 13200 (Georges Bank and Nantucket Shoals, 1:400,000), 12300 (NY Approaches - Nantucket Shoals to Five Fathom Bank, 1:400,000), 12200 (Cape May to Cape Hatteras, 1:419,706), 11520 (Cape Hatteras to Charleston, 1:432,720), 11480 (Charleston Light to Cape Canaveral, 1:449,659) and 11460(Cape Canaveral to Key West, 1:466,940)).

* * * * *

(c)* * *

(2)* * *

(ii)* * *

(D) *Buoy lines.* All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(E) *Groundlines.* All groundlines must be composed entirely of sinking line. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

* * * * *

(5)* * *

(ii)* * *

(B) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

* * * * *

(6) * * *

(ii) * * *

(B) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted for this requirement under paragraph (a)(4) of this section. * * *

* * * * *

(7) * * *

(ii) * * *

(C) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

* * * * *

(8) * * *

(ii) * * *

(B) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

* * * * *

(9) * * *

(ii) * * *

(B) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

* * * * *

(d) * * *

(1) * * *

(i) * * * If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, sinking line must be used between these objects.

* * * * *

(6) * * *

(ii) * * *

(D) *Groundlines.* On or before October 5, 2008, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

* * * * *

(7) * * *

(ii) * * *

(D) *Groundlines.* On or before October 5, 2008, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. * * *

* * * * *

(i) * * *

(3) * * *

(i) * * *

(B) * * *

(*1*) *Anchored gillnet gear*—(*i*) *Groundlines.* All groundlines must be made entirely of sinking line. * * *

* * * * *

(*2*) *Trap/pot gear*—(*i*) *Groundlines.* All groundlines must be made entirely of sinking line. * * *

* * * * *

[FR Doc. E8–20167 Filed 8–29–08; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 071106673–8011–02]**

**RIN 0648–XK14**

## Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closures and openings.

**SUMMARY:** NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2008 total allowable catch (TAC) of Atka mackerel in these areas by vessels participating in the BSAI trawl limited access fishery. NMFS is also announcing the opening and closing dates of the first and second directed fisheries within the harvest limit area (HLA) in areas 542 and 543. These actions are necessary to conduct directed fishing for Atka mackerel in the HLA in areas 542 and 543.

**DATES:** The effective dates are provided in Table 1 under the **SUPPLEMENTARY INFORMATION** section of this temporary action.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 TAC of Atka mackerel for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea was established as 319 metric tons (mt) by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008), reallocation (73 FR 44173, July 30, 2008), and correction (73 FR 47559, August 14, 2008).

In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 159 mt of the 2008 Atka mackerel TAC allocated to vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea will be necessary as incidental catch to support other anticipated groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 160 mt. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea by vessels participating in the BSAI trawl limited access fishery.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543, 48 hours after prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea. The Regional Administrator has established the opening dates for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either area 542 or 543. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under Table 1 of this notice.

TABLE 1. EFFECTIVE DATES AND TIMES

| Action | Area | Effective Date[1] | |
|---|---|---|---|
| | | From | To |
| Prohibiting Atka mackerel by vessels participating in the BSAI trawl limited access fishery | Eastern Aleutian District and the Bering Sea subarea | 1200 hrs, September 1, 2008 | 1200 hrs, November 1, 2008 |
| Opening the first and second directed fisheries in the HLA for the Amendment 80 cooperative | 542 and 543 | 1200 hrs, September 3, 2008 | 1200 hrs, September 13, 2008 |
| | 542 and 543 | 1200 hrs, September 15, 2008 | 1200 hrs, September 25, 2008 |
| Opening the first and second directed fisheries in the HLA for vessels participating in the Amendment 80 limited access sector | 542 and 543 | 1200 hrs, September 3, 2008 | 1200 hrs, September 11, 2008 |
| | 542 and 543 | 1200 hrs, September 13, 2008 | 1200 hrs, September 21, 2008 |
| Opening the first directed fishery in the HLA for vessels participating in the BSAI trawl limited access sector | 542 | 1200 hrs, September 3, 2008 | 1200 hrs, September 13, 2008 |

[1]Alaska local time

In accordance with § 679.20(a)(8)(iii)(A) and § 679.20(a)(8)(iii)(B), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS (73 FR 47852, August 11, 2008).

In accordance with the final 2008 and 2009 harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008), revision (73 FR 44173, July 30, 2008), and correction (73 FR 47559, August 14, 2008), and § 679.20(a)(8)(ii)(C)(*1*), the HLA limits of the B season allowance of the 2008 TACs in areas 542 and 543 are 3,843 mt and 2,789 mt, respectively, for vessels participating in the Amendment 80 limited access fishery. The HLA limits of the B season allowance of the 2008 TACs in areas 542 and 543 are 2,534 mt and 1,735 mt, respectively, for Amendment 80 cooperatives. The HLA limit of the B season allowance of the 2008 TACs in area 542 is 130 mt for the BSAI trawl limited access fishery. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed in Table 1 of this notice.

After the effective dates of these closures, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery and the opening and closing of the fisheries for the HLA limits established for area 542 and area 543 pursuant to the 2008 Atka mackerel TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 25, 2008. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 27, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E8–20251 Filed 8–27–08; 4:15 pm]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 071106673–8011–02]**

**RIN 0648–XK13**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 ft (18.3 m) LOA and Longer Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 60 ft (≥ 18.3 meters (m)) length overall (LOA) using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2008 Pacific cod total allowable catch (TAC) allocated to catcher vessels ≥ 60 ft (18.3 m) LOA using hook-and-line gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 28, 2008, through 2400 hrs, A.l.t., December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 Pacific cod TAC allocated to catcher vessels ≥ 60 ft (18.3 m) LOA using hook-and-line gear in the BSAI is 153 metric tons (mt) as established by the final 2008 and 2009 harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) and reallocation on August 19, 2008 (73 FR 49962, August 25, 2008).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the 2008 Pacific cod directed fishing allowance allocated to catcher vessels ≥ 60 ft (18.3 m) LOA using hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels ≥ 60 ft (18.3 m) LOA using hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels ≥ 60 ft (18.3 m) LOA using hook-and-line gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 26, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 27, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E8–20252 Filed 8–27–08; 4:15 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 73, No. 170
Tuesday, September 2, 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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 332

**RIN 3206–AL13**

### Recruitment and Selection Through Competitive Examination

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing to amend its regulations governing recruitment and selection through competitive examination primarily to clarify the distinction among objections, pass overs, and suitability determinations. OPM is also proposing to amend the definition section of this part to make the regulations more readable and to remove the section in this part dealing with filling certain postmaster positions because the information is obsolete.

**DATES:** We will consider comments received on or before November 3, 2008.

**ADDRESSES:** You may submit comments through the Federal eRulemaking Portal at: *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

You may also send, deliver or fax comments to Angela Bailey, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700; e-mail at *employ@opm.gov*; or fax at (202) 606–2329.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Watson by telephone at (202) 606–0830; by fax at (202) 606–2329; by TTY at (202) 418–3134; or by e-mail at *linda.watson@opm.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to provisions codified in title 5, United States Code (U.S.C.), and Executive Orders issued pursuant to those provisions, Congress and the President have delegated to OPM several authorities related to the recruitment and selection process for individuals seeking competitive service positions in the Federal Government. Under 5 U.S.C. 3318, Congress confers upon OPM the authority to rule on any objection or pass over request filed by a Federal agency seeking to fill vacancies for such positions. In recent years, OPM has delegated examining authority to Federal agencies to adjudicate most objections and pass over requests. OPM retains exclusive authority to: (a) Make medical qualification determinations pertaining to preference eligibles; and (b) grant or deny an agency's pass over request of a preference eligible with a compensable service-connected disability of 30 percent or more. Except for OPM's exclusive authority, Federal agencies with delegated examining authority under 5 U.S.C. 1104(a)(2) have the authority to adjudicate objections and pass over requests pertaining to applicants for positions in their agencies, but do not have such authority with respect to positions elsewhere in the Federal Government.

An objection is a request to remove a candidate from consideration on a particular certificate, and a pass over request is an objection filed against a preference eligible that results in the selection of a non-preference eligible. (Throughout this discussion, the use of the term ''objection'' in this document should be read to encompass pass overs, even if pass overs are not explicitly mentioned). OPM promulgated regulations in section 332.406 of title 5, Code of Federal Regulations (CFR), in which it describes the circumstances under which an objection will be sustained or a pass over request granted.

In addition to its authority for adjudicating objections and pass overs, OPM is authorized to regulate the fitness of applicants for competitive service positions and for career appointment in the Senior Executive Service, as well as the conduct of employees in competitive service and Senior Executive Service positions. OPM, exercising this authority, published regulations governing suitability determinations, which are located at 5 CFR part 731. As with objections and pass over requests, OPM has delegated to Federal agencies the authority to make most suitability determinations.

Although the statutory schemes related to suitability determinations and pass overs/objections are separate and distinct from each other, OPM has, in the recent past, unintentionally mingled the two, possibly giving rise to the impression that the pass over regulations and the suitability regulations were interconnected in some way. The Merit Systems Protection Board's (MSPB) decisions in *Edwards* v. *Department of Justice,* 86 MSPR 365 (2000) and 87 MSPR 518 (2001), which, to some extent, erased the distinction between the two regulatory schemes, led OPM to conclude that it was essential to restore clarity to these two important and distinct features of the Federal personnel system. To dispel any confusion that has been created, OPM is proposing to revise this regulation to clarify that neither an agency's objections nor its pass over requests constitute suitability actions and that decisions on these objections or pass over requests similarly are not suitability actions. Consequently, when an objection or pass over request is made, the regulation at 5 CFR 332.406 applies, but the procedures set forth in 5 CFR part 731 do not apply. OPM has also clarified its regulations in 5 CFR part 731 to ensure that the intended distinction between the two procedures is understood and maintained. See 73 FR 20149 (April 15, 2008). To demonstrate the basis for the distinction between these two statutory schemes, a brief review of each of these schemes is helpful.

**Objections/Pass Overs**

In general, agencies may select candidates for vacancies in the competitive service in one of two methods—the traditional ''Rule of Three'' method, in which an agency selects from the highest three eligibles available for appointment, drawing from a list of candidates who have been rated and ranked by numerical scores, or alternate ranking and selection procedures, pursuant to which a category rating system for evaluating candidates is established. The differences are straightforward.

When OPM or an agency's delegated examining office (DEO) uses the traditional ''Rule of Three'' ranking and selection procedures, the selecting

official requests a list of eligible candidates who meet the minimum qualification requirements. OPM or the DEO is required to provide either a list of all qualified candidates, appropriately rated and ranked, or enough names from the top of a register of qualified candidates, appropriately rated and ranked, to permit an agency to consider at least three candidates for appointment with respect to each vacancy that the agency intends to fill (5 U.S.C. 3317(a)). Under this procedure, eligible candidates are assigned numerical scores including veterans' preference points of 5 points or 10 points, as applicable (5 U.S.C. 3309, 3313). An appointing official must select from the highest three candidates available for appointment on the certificate furnished by OPM or the DEO, except as discussed below (5 U.S.C. 3318(a)). This ranking and selection procedure is often referred to as the ''Rule of Three.''

When an agency uses a category-based rating method to assess, rate, and rank job applicants for positions filled through the competitive examination process, applicants who meet the minimum qualification requirements are ranked by being placed in two or more predefined quality categories instead of being ranked in numeric score order. Veterans' preference is applied by listing preferences eligibles ahead of non-preference eligibles within the same quality category in which they were assigned based upon the job-related assessment tool(s). No points are assigned. Qualified preference eligibles with a compensable service-connected disability of 30-percent or more and those with a compensable service-connected disability of at least 10-percent but less than 30-percent are placed at the top of the highest quality category (except with respect to scientific or professional positions at or above the GS–9 level), regardless of the quality category in which they would be placed based upon their examination results. Under category rating, an appointing official may select from any of the candidates in the highest quality category (or, if fewer than three candidates have been assigned to the highest category, from a merged category consisting of the highest and the second highest quality categories), except that, generally, all the preference eligible choices must be exhausted before an agency may select a non-preference eligible candidate (5 U.S.C. 3319).

Congress gave agencies the right to object to any candidate for employment whose name appears on a certificate, whether the agency is using the traditional ''Rule of Three'' or category rating. The procedures are the same, regardless of the method of selection. As prescribed in 5 U.S.C. 3318(a), OPM or an agency with delegated examining authority may sustain an objection that is based on a ''proper and adequate reason under regulations prescribed by the Office (OPM).'' To ensure that all applicants for competitive service positions possess the necessary health, character, and ability for the employment sought, OPM has determined that any of the reasons set forth as criteria for making suitability decisions in 5 CFR part 731 or as bases for disqualification by OPM in 5 CFR part 339 constitutes a ''proper and adequate reason.'' In addition, OPM has determined to reserve to itself the ability to set forth in its Delegated Examining Operations Handbook additional reasons that constitute ''proper and adequate'' reasons for objections in OPM's view.

As previously indicated, a request for a pass over is a specific type of objection. As with any objection, an agency may not pass over a preference eligible (with respect to a Rule-of-Three selection process) or select a non-preference eligible ahead of a preference eligible in the same quality category (with respect to a category rating selection process) unless OPM or the appropriate DEO grants the agency's pass over request under 5 U.S.C. 3318(b)(1). See also 5 U.S.C. 3319(c)(2). When an agency seeks to pass over a preference eligible candidate who is a 30 percent or more compensably disabled veteran, only OPM possesses the authority to adjudicate the agency's pass over request. The standard for adjudicating a pass over request is identical to the standard for adjudicating any other objection. Consequently, an agency's pass over request will be granted if that request is based on ''proper and adequate reasons,'' including those reasons derived from 5 CFR part 339 or 731.

There is no statutory or regulatory right to appeal from a decision sustaining an objection or granting a pass over request. For that reason, an individual has no right of appeal to MSPB from an OPM, agency or DEO decision to sustain an objection or grant a pass over request, regardless of the reason for the decision.

**Suitability Actions**

In 5 U.S.C. 7301, Congress conferred upon the President the authority to prescribe regulations for the conduct of employees in the Executive Branch. In addition, pursuant to 5 U.S.C. 3301, the President may ''(1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service; [and] (2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought. * * *'' Executive Order 10577 directs OPM to examine ''suitability'' for competitive Federal employment.

Pursuant to 5 CFR 731, OPM, an agency, or the DEO, as appropriate, may cancel an individual's eligibility, remove an individual from Federal employment, and/or debar an individual from future Federal employment when it determines the action will protect the integrity or promote the efficiency of the civil service. A non-selection (e.g., objection or pass over pursuant to 5 CFR part 332) for a specific position, however, is not a suitability action even if the non-selection is based on reasons set forth in 5 CFR 731.202(b).

Prior to taking a suitability action, OPM or an agency with delegated authority must notify the applicant, appointee, or employee in writing of the proposed action and must specify the reasons for this action. Under 5 CFR 731.302 and 731.402, the notice must also include information on the individual's right to answer to the notice in writing. After considering the answer of the individual, if any, OPM or an agency with delegated authority then renders a final decision. In 5 CFR 731.501, an individual against whom a suitability action has been taken is given the right of appeal to MSPB.

In light of these two separate and distinct statutory and regulatory schemes, an agency that wishes, for reasons set forth in 5 CFR 731.202(b), not to appoint an individual on a certificate has two options. First, the agency may make a suitability determination under 5 CFR part 731 with respect to the individual. Alternatively, the agency may object to or request to pass over the candidate pursuant to 5 CFR 332.406. Under this latter authority, an agency may choose not to appoint a candidate if its objection is sustained or its pass over request is granted. An agency may pursue either route, but must satisfy the standards applicable to the chosen procedure. It is permissible for an agency to object or request to pass over a candidate on a certificate of eligibles and then, if the objection is sustained or the pass over request is granted, to refer the candidate's application for suitability review and adjudication under 5 CFR part 731. When an agency objects to an individual on the basis of material, intentional false statement or

deception or fraud in examination or appointment, and the objection is sustained, however, an agency must also refer the candidate's application to OPM for any suitability action that may be warranted, because of the significance of these factors and to ensure uniformity throughout the Federal Government.

In this proposed regulation, OPM proposes to add the definitions for ''objection'' and ''pass over request'' to clarify the process that applies to objections and pass over requests and distinguish that process from the suitability process and to update the definitions for ''active military duty'' and ''certificate'' in 5 CFR 332.102.

OPM proposes to revise 5 CFR 332.406 to make it clear that the procedure for requesting objections and pass overs is not part of the suitability process. OPM also clarifies that an individual may not appeal an OPM or agency's decision to sustain an objection or pass over request to MSPB under 5 CFR part 731, even if the decision is based on reasons set forth in 5 CFR 731.202(b).

OPM also proposes to remove 5 CFR 332.103, Filling certain postmaster positions. This section is obsolete due to the passage of Public Law 91–375, The Postal Reorganization Act (Act). The Act transformed the former Post Office Department into the United States Postal Service (USPS) and made it an independent establishment of the executive branch of the Federal Government. USPS subsequently established its own examining and hiring system, while retaining the Civil Service retirement system.

**E.O. 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

**List of Subjects in 5 CFR Part 332**

Government employees.

Office of Personnel Management.

**Michael W. Hager,**

*Acting Director.*

Accordingly, OPM proposes to amend 5 CFR part 332 as follows:

## PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

1. The authority citation for part 332 is revised as follows:

**Authority:** 5 U.S.C. 1103, 1104, 1302, 3301, 3302, 3304, 3312, 3317, 3318, 3319; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

### Subpart A—General Provisions

2. Revise § 332.102 to read as follows:

**§ 332.102 Definitions.**

In this part:

*Active military duty* means active duty in full pay status in the Armed Forces of the United States, including an initial period of active duty for training, as defined in Chapter 1 of title 38, U.S. Code.

*Certificate* means a list of eligibles from which an appointing officer selects one or more applicants for appointment.

*Objection* means an agency's request to remove a candidate from consideration on a particular certificate.

*Pass over request* means an objection filed against a preference eligible that results in the selection of a non-preference eligible.

**§ 332.103 [Removed]**

3. Remove § 332.103.

### Subpart D—Consideration for Appointment

4. Revise § 332.406 to read as follows:

**§ 332.406 Objections to eligibles.**

(a) *Delegated authority*. Except as specified in paragraphs (a)(1) and (a)(2) of this section, OPM has delegated the authority to adjudicate objections to eligibles, including pass over requests, to Federal agencies.

(1) OPM retains exclusive authority to approve the sufficiency of an agency's request to pass over preference eligibles who are thirty percent (30%) or more compensably disabled. Such persons have the right, in accordance with 5 U.S.C. 3318, to respond to the pass over request before OPM makes a final decision.

(2) OPM also retains the exclusive authority to approve the sufficiency of an agency's reasons to medically disqualify or medically pass over a preference eligible or disabled veteran in certain circumstances, in accordance with part 339 of this chapter.

(3) An agency must refer any objection or pass over request that is based on material, intentional false statement or deception or fraud in examination or appointment to OPM for a suitability action where warranted, under part 731 of this chapter.

(b) *Standard for objections or pass overs*. An agency is not required to consider an individual for a position when an objection to or request to pass over the particular individual is sustained or granted. An objection, including a pass over request, may be sustained only if the objection is based on a proper and adequate reason. The reasons set forth for disqualification by OPM in part 339 of this chapter constitute proper and adequate reasons to sustain an objection. Similarly, the criteria for making suitability determinations in part 731 of this chapter constitute proper and adequate reasons to sustain an objection or grant a pass over request. In addition, reasons published by OPM in the Delegated Examining Operations Handbook, constitute proper and adequate reasons to sustain an objection or grant a pass over request.

(c) *Sufficiency of the reasons for a pass over*. Subject to the exception set forth in paragraph (e) of this section, an agency may not pass over a preference eligible to select a non-preference eligible unless OPM or an agency with delegated authority also makes a determination that the sufficiency of the reasons is supported by the evidence submitted for a pass over request.

(d) *Agency's obligation while request for objection is pending*. Subject to the exception set forth in paragraph (e) of this section, if an agency makes an objection against an applicant for a position, or seeks to pass over the applicant, and the individual that the agency wishes to select would be within reach of selection only if the objection is sustained, or the pass over granted, that agency may not make a selection for the position.

(e) *Applicability of paragraphs (c) and (d) of this section*. Paragraphs (c) and (d) of this section do not apply if the agency has more than one position to fill from the same certificate and holds open a position that the individual against whom an objection has been filed, or a pass over request made, could fill, in the event that the objection is not sustained or the pass over request is denied.

(f) *Procedures for objections and pass overs*. Agencies must follow the procedures for objecting to or requesting to pass over an eligible published by OPM in the Delegated Examining Operations Handbook.

(g) *No appeal rights to Merit Systems Protection Board (MSPB)*. An individual may not appeal to the MSPB a decision by OPM or an agency with delegated authority to sustain an objection or grant a pass over request pursuant to this part irrespective of the reason for the decision.

[FR Doc. E8–20272 Filed 8–29–08; 8:45 am]

BILLING CODE 6325–39–P

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Parts 410 and 412**

**RIN 3206–AK75**

## Training; Supervisory, Management, and Executive Development

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management proposes to amend its regulations to implement certain training and development requirements contained in the Federal Workforce Flexibility Act of 2004.

**DATES:** Comments must be received on or before November 3, 2008.

**ADDRESSES:** You may submit comments, identified by ''RIN 3206–AK75,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Web Site: http://www.opm.gov*. Click on the ''Regulations'' icon at the bottom right of the Web page. Follow the instructions for submitting comments.
- *E-mail: employ@opm.gov*. Include ''RIN 3206-AK75'' in the subject line of the message.
- *Fax:* (202) 606–2329.
- *Mail, Hand Deliver/Courier comments:* Ms. Nancy Randa, Deputy Associate Director for the Center for Leadership, Executive Resources, and Policy Analysis, Room 6357, 1900 E Street, NW., Washington, DC 20415–9700.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Dube by telephone at (202) 606–4063, by FAX at (202) 606–1637, or by e-mail at *cheryl.dube@opm.gov*.

**SUPPLEMENTARY INFORMATION:** On October 30, 2004, the President signed the Federal Workforce Flexibility Act of 2004 (Act), Public Law 108–411, into law. The Act makes several significant changes in the law governing the training and development of Federal employees, supervisors, managers, and executives. The first change requires each agency to evaluate, on a regular basis, its training programs and plans with respect to the accomplishment of its specific performance plans and strategic goals, and to modify its training plans and programs as needed to accomplish the agency's performance plans and strategic goals. Other changes to the regulation, not related to the Act, are made to better align with law the requirement for continued service agreements and the submission of training data. The second major change requires agencies to consult with the Office of Personnel Management (OPM) to establish comprehensive management succession programs designed to provide training to employees to develop managers for the agency. It also requires agencies, in consultation with OPM, to establish programs to provide training to managers regarding actions, options, and strategies a manager may use in relating to employees with unacceptable performance, mentoring employees, improving employee performance and productivity, and conducting employee performance appraisals. The Homeland Security Act of 2002, as codified at 5 U.S.C. 1103(c), established the Human Capital Assessment and Accountability Framework (HCAAF) and mandated OPM to design systems and set standards, including appropriate metrics, for assessing the management of human capital by Federal agencies. 5 U.S.C. 1103(c) also specifies OPM will develop standards for: (1) Aligning human capital strategies of agencies with the organization's missions, goals and objectives, (2) ensuring continuity of leadership through succession plans, and (3) holding managers and human resources officers accountable for efficient and effective human resources management. The following are the principal results sought by the proposed changes in regulations:

○ Agencies will have effective and cost-efficient training programs linked to agency strategic plans;

○ Managers will develop strategies to mentor others and to improve employee performance and productivity.

To provide guidance to agencies in accomplishing these results, we are proposing changes in the following parts of title 5 of the Code of Federal Regulations: Part 410 on ''Training'' and part 412 on ''Executive, Management, and Supervisory Development.''

OPM is amending 5 CFR part 410, subpart B, to reflect new agency responsibilities for planning training so employee training and development will align with agency strategic plans. The revised subpart B also would cover agency responsibility for the evaluation of training, currently included under subpart F. The revised subpart C would better align language on continued service agreements with law. The revised subpart C would also remove the option to extend the date for agencies to report training data to OPM. The following are the major proposed changes:

○ Revised § 410.201(b) would make agency training program requirements more visible by listing those requirements and emphasizing the alignment of employee training and development with agency strategic plans;

○ Revised § 410.201(d) would include language more consistent with the Human Capital Assessment and Accountability Framework and consolidate references to Executive Order 11348, which provides for the further training of Government employees and requires agencies to review training programs no less often than annually;

○ Delete current § 410.203 and incorporate the information in that section into § 410.201. § 410.204 would be renumbered as § 410.203.

○ Delete current § 410.701 (c) as extensions to report training data to OPM are no longer accepted. § 410.701 (d) would be redesignated as § 410.701 (c).

○ Delete current subpart F and redesignate subpart G as subpart F, and renumber § 410.701 as § 410.601.

Part 412, ''Executive, Management, and Supervisory Development,'' requires some modification of its structure to incorporate the changes in law. Therefore, the current structure of two subparts (Subpart A—General Provisions, and Subpart B—Senior Executive Service Status and Nonstatus Candidate Development Programs) would be modified to three subparts (Subpart A— General Provisions, Subpart B— Succession Planning, and Subpart C— Executive Development). Specifically, current § 412.103 would be revised and placed within the new subpart B as § 412.201, current § 412.104 would be revised and would be placed within the new subpart C as § 412.301, and current subpart B would be revised and placed within the new subpart C. The following are the additional major proposed changes in part 412:

### Subpart A—General Provisions

○ Revised § 412.102(a), (b) and (b)(1) would make more succinct the references to the United States Code for easier reading, explain the leadership development continuum, and delete the reference to ''mastery level'' because the term implies development stops when in fact development should be ongoing;

○ Revised § 412.102(b)(3) would replace ''corporate perspective'' with ''broad agency and Governmentwide perspective,'' to more accurately reflect the intended goal.

○ Current § 412.103(c)(2) and (c)(3) would be addressed in the new subpart on Succession Planning, consistent with the Act's requirement that succession

programs provide development for future managers;

○ Current § 412.104(a)(2) would be deleted. The change would eliminate the exemption from Governmentwide recruitment for candidate development programs.

**Subpart B—Succession Planning**

○ New § 412.201 would specify requirements for agency management succession programs;

○ Revised § 412.202 would clarify that agency leadership development programs are part of the general workforce development strategy;

**Subpart C—Senior Executive Service Candidate Development Programs**

○ New § 412.301(a) would provide for an OPM-certified agency Senior Executive Service Candidate Development Program (SESCDP), certification of the Executive Core Qualifications (ECQs) of candidates by a Qualifications Review Board, and selection for the SES, without further competition;

○ New § 412.301(b) would require agencies to submit a policy describing their SESCDP program methodologies. It also would require them to obtain OPM approval for candidate development programs once every 5 years to ensure their alignment and strategic linkage with agency succession plans and would add a reference to multi-agency programs to address collaborative, Governmentwide executive development;

○ New § 412.301(c) would require agencies with CDPs approved under previous regulations to apply to OPM for re-approval under the new regulations in accordance with new § 412.301 (b). It also indicates all existing approvals expire within 2 years after publication of this regulation. SESCDPs in progress on the date the regulations become final may be completed and graduates of those programs may be submitted for QRB certification regardless of this expiration.

○ New § 412.302(a) defines the Executive Resources Board (ERB) oversight responsibilities in the SESCDP approval process;

○ New § 412.302(a)(1) clarifies competition must be under SES merit staffing procedures;

○ New § 412.302(b)(3) would modify the four-month developmental assignments to include at least one assignment of 90 continuous days outside the scope of the candidate's position of record and require the assignments to include roles at the executive level where the candidate is held responsible for achieving organizational or agency results during the developmental assignment. The purpose of the new provision is to enhance and broaden the candidate's experience, increase his or her knowledge, and maximize his or her understanding of the overall functioning of the agency, so the candidate is prepared for a range of agency positions at the SES level.

○ New § 412.302(d) would eliminate the references to ''status programs'' (current § 412.202) and ''non-status programs'' (current § 412.203). The new provisions will refer to two categories of ''candidates'': 1) Individuals who hold a career or career-type appointment within the civil service; and 2) individuals who do not hold such an appointment, and will define conditions under which individuals in either category may participate in an SESCDP.

**Subpart D—Executive Development**

○ New § 412.401 would add continuing development of current SES members as an ongoing requirement tied to the performance process through an Executive Development Plan (EDP). This section also provides for the developmental use of sabbaticals and long-term assignments outside the Federal sector, as provided by relevant legal authorities.

**Executive Order 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

**Regulatory Flexibility Act**

I certify these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

**List of Subjects in 5 CFR Parts 410 and 412**

Education, Government employees.

Office of Personnel Management.

**Michael W. Hager,**

*Acting Director.*

Accordingly, OPM is proposing to amend 5 CFR parts 410 and 412 as follows:

## PART 410—TRAINING

1. The authority citation for part 410 is revised to read as follows:

**Authority:** 5 U.S.C. 1103(c), 4101, *et seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

2. Revise the heading of subpart B to read as follows:

### Subpart B—Planning and Evaluating Training

3. Revise §§ 410.201 and 410.202 to read as follows:

#### § 410.201 Responsibilities of the head of an agency.

Agency employee development plans and programs should be designed to build or support an agency workforce capable of achieving agency mission and performance goals and facilitating continuous improvement of employee and organizational performance. In developing strategies to train employees, heads of agencies or their designee(s), under section 4103 of title 5, United States Code and in Executive Order 11348, are required to:

(a) Establish, budget for, operate, maintain, and evaluate plans and programs for training agency employees by, in, and through Government or non-Government facilities, as appropriate;

(b) Establish policies governing employee training including a statement of the alignment of employee training and development with agency strategic plans, the assignment of responsibility to ensure the training goals are achieved, and the delegation of training approval authority to the lowest appropriate level;

(c) Establish priorities for training employees and allocate resources according to those priorities; and

(d) Develop and maintain plans and programs that:

(1) Identify mission-critical occupations and competencies;

(2) Identify workforce competency gaps;

(3) Include strategies for closing competency gaps; and

(4) Assess periodically, but not less often than annually, as required by section 303 of Executive Order 11348.

#### § 410.202 Responsibilities for evaluating training.

Agencies must evaluate their training programs annually to determine how well such plans and programs contribute to mission accomplishment and meet organizational performance goals.

4. Remove § 410.203 and redesignate § 410.204 as § 410.203.

5. Remove § 410.701(c) and redesignate § 410.701(d) as § 410.701(c).

6. Remove subpart F and redesignate subpart G as subpart F, including redesignating § 410.701 as § 410.601.

7. Revise part 412 to read as follows:

## PART 412—SUPERVISORY, MANAGEMENT, AND EXECUTIVE DEVELOPMENT

**Subpart A—General Provisions**

Sec.
412.101 Coverage.
412.102 Purpose.

**Subpart B—Succession Planning**

412.201 Management succession.
412.202 Systematic training and development of supervisors, managers, and executives.

**Subpart C—Senior Executive Service Candidate Development Programs**

412.301 Obtaining approval to conduct a Senior Executive Service candidate development program (SESCDP).
412.302 Criteria for a Senior Executive Service candidate development program (SESCDP).

**Subpart D—Executive Development**

412.401 Continuing executive development.

**Authority:** 5 U.S.C. 1103 (c)(2)(C), 3396, 3397, 4101, *et seq.*

### Subpart A—General Provisions

#### § 412.101 Coverage.

This part applies to all incumbents of, and candidates for, supervisory, managerial, and executive positions in the General Schedule, the Senior Executive Service (SES), or equivalent pay systems also covered by part 410 of this chapter.

#### § 412.102 Purpose.

(a) This part implements for supervisors, managers, and executives the provisions of 5 U.S.C. chapter 41, related to training, and 5 U.S.C. 3396, related to the criteria for programs of systematic development of candidates for the SES and the continuing development of SES members.

(b) This part identifies a continuum of leadership development, starting with supervisory positions and proceeding through management and executive positions Governmentwide. For this reason, this part provides requirements by which agencies:

(1) Develop the competencies needed by supervisors, managers, and executives;

(2) Provide learning through continuing development and training in the context of succession planning; and

(3) Foster a broad agency and Governmentwide perspective to prepare individuals for advancement, thus supplying the agency and the Government with an adequate number of well prepared and qualified candidates to fill leadership positions.

### Subpart B—Succession Planning

#### § 412.201 Management succession.

The head of each agency, in consultation with OPM, must develop a comprehensive management succession program, based on the agency's workforce succession plans, to fill agency supervisory and managerial positions. These programs must be supported by employee training and development programs developed under 5 CFR 410.201 to prepare individuals for advancement, with a focus on both individual and agency performance and strengthening organizational capability, and to ensure an adequate number of well-prepared and qualified candidates for leadership positions. These programs must:

(a) Implement developmental training consistent with agency succession management plans;

(b) Provide continuing learning experiences throughout an individual's career, such as details, mentoring, coaching, learning groups, and projects. These experiences should provide broad knowledge and practical experience linked to OPM's Federal leadership competencies as well as agency-identified, mission-related competencies, and should be consistent with the agency's succession management plan; and

(c) Include program evaluations pursuant to 5 CFR 410.202.

#### § 412.202 Systematic training and development of supervisors, managers, and executives.

All agencies must provide for the development of individuals in supervisory, managerial and executive positions, as well as individuals whom the agency identifies as potential candidates for those positions, based on the agencies' succession plans. Agencies also must issue written policies to ensure they:

(a) Design and implement leadership development programs integrated with the employee development plans, programs, and strategies required by 5 CFR 410.201, and that foster a broad agency and Governmentwide perspective;

(b) Provide training within one year of an employee's initial appointment to a supervisory position and follow up periodically, but at least once every three years, by providing each supervisor and manager additional training on the use of appropriate actions, options, and strategies to:

(1) Mentor employees;

(2) Improve employee performance and productivity;

(3) Conduct employee performance appraisals in accordance with agency appraisal systems; and

(4) Identify and assist employees with unacceptable performance.

(c) Provide training when individuals make critical career transitions to supervisor, manager, or executive consistent with the results of assessments of the agency's needs and the individual's potential.

### Subpart C—Senior Executive Service Candidate Development Programs

#### § 412.301 Obtaining approval to conduct a Senior Executive Service candidate development program (SESCDP).

(a) An SESCDP is an OPM-approved training program designed to develop the executive qualifications of employees with strong executive potential. Successful completion of the program qualifies them for and authorizes their initial career appointment in the SES. An agency conducting an SESCDP may submit program graduates for Qualifications Review Board (QRB) review of their executive qualifications under 5 CFR 317.502. A program graduate certified by a QRB may receive an initial career appointment without further competition to any SES position for which he or she meets the professional and technical qualifications requirements.

(b) An agency covered by subchapter II of chapter 31 of title 5, United States Code, may apply to OPM to conduct an SESCDP alone or on behalf of a group of agencies. (In this subpart, the term ''agency'' refers to either a single agency or a group of agencies acting in partnership under this subpart.) Any agency developing an SESCDP must submit a policy document describing its program methodologies to OPM for formal approval before implementing the SESCDP. An agency must seek OPM approval every five years thereafter, and must also consult OPM before implementing a change substantially altering how the SESCDP complies with the requirements of this regulation. An agency implementing an SESCDP without first obtaining formal approval may not submit graduates of the program for QRB review.

(c) An agency that obtained OPM approval under previous regulations must apply for re-approval in accordance with requirements in paragraph (b) of this section and this subpart before initiating a new SESCDP. All existing approvals expire within 2 years after publication of this regulation.

(d) An agency covered by subchapter II of chapter 31 of title 5, United States

Code, may authorize a major agency component employing senior executives to apply directly to OPM for approval to conduct an SESCDP. Such an application from a component must be accompanied by the agency's written endorsement. To obtain approval, the component must meet the SESCDP requirements of this subpart independent of agency involvement.

(e) As always, agencies should be mindful of merit principles in carrying out their functions under this subpart.

**§ 412.302 Criteria for a Senior Executive Service candidate development program (SESCDP).**

(a) *Executive Resources Board requirements.* An agency's Executive Resources Board (ERB) must oversee the SESCDP. The ERB ensures the development program lasts between 12 and 24 months and includes substantive developmental experiences that should equip a successful candidate to accomplish Federal Government missions as a senior executive. The agency ERB must oversee and be accountable for SESCDP recruitment, merit staffing, and assessment. The agency ERB must ensure the program follows SES merit staffing provisions in 5 CFR 317.501, subject to the condition explained in § 412.302(d)(1) of this part. The ERB also must oversee development, evaluation, progress in the program, and graduation of candidates, and for requesting Qualifications Review Board (QRB) certification of graduates where appropriate. The ERB submits for QRB review, within 90 days of graduation from the program. The ERB also must oversee the writing and implementation of a removal policy for program candidates who do not make adequate progress.

(b) *Recruitment.* Recruitment for the program is from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service. The number selected shall be consistent with the number of expected vacancies.

(c) *Senior Executive Service candidate development program requirements.* An SESCDP lasts between 12 and 24 months. To graduate, a candidate must accomplish the requirements between the beginning and ending dates of the program. Each individual participating in an SESCDP must have:

(1) A documented Senior Executive Service Development Plan (SESDP) based upon a competency-based needs determination and approved by the agency ERB. The components of the development plan must:

(i) Address the executive core qualifications (ECQs);

(ii) Address Federal Government leadership challenges crucial to the senior executive;

(iii) Provide increased knowledge and understanding of the overall functioning of the agency, so the participant is prepared for a range of positions and responsibilities;

(iv) Include interaction with a wide mix of senior Federal employees outside the candidate's department or agency to foster a Governmentwide perspective;

(v) Include interaction with senior non-Federal employees to increase experience of the broader context in which executives operate; and

(vi) Have Governmentwide or multi-agency applicability in the nature and scope of the training;

(2) A formal training experience lasting at least 80 hours that addresses the ECQs and their application to SES positions Governmentwide, explores Federal leadership challenges crucial to the senior executive, and has Governmentwide or multi-agency applicability;

(3) A developmental assignment of at least 4 months of full-time service to include at least one assignment of 90 continuous days in a position other than, and substantially different from, the candidate's position of record. The assignment must include executive level responsibility and differ from the candidate's current and past assignments in ways that broaden the candidate's experience, as well as challenge the candidate with respect to leadership competencies and the ECQs. Assignments need not be restricted to the agency, the Executive Branch, or the Federal Government, so long as they can be accomplished in compliance with applicable law and federal and agency specific ethics regulations. The candidate is held accountable for organizational or agency results achieved during the assignment. If the assignment is in a non-Federal organization, the ERB must provide for adequate documentation of the individual's actions and accomplishments and must determine that the assignment will contribute to development of the candidate's executive qualifications; and

(4) A mentor who is a member of the SES or is otherwise determined by the ERB to have the knowledge and capacity to advise the candidate, consistent with goals of the SESCDP. The mentor and the candidate are jointly responsible for a productive mentoring relationship; however, the agency must establish methods to assess these relationships and, if necessary, facilitate them or make appropriate changes in the interest of the candidate.

(d) An SESCDP is a training opportunity that OPM has determined to compete, with the condition noted in § 412.302(d)(1) of this part, under SES merit staffing procedures. Because SES merit staffing procedures require recruitment from among either all qualified persons or all qualified persons within the civil service, an agency must provide procedures under which all persons within one of these two possible areas of consideration may compete for and, if selected, participate in its SESCDP.

(1) An individual who does not currently hold a career or career-type civil service appointment may only participate in an SESCDP by means of a Schedule B appointment authorized by 5 CFR 213.3202(j) to a full-time position created for developmental purposes connected with the SESCDP. Exercising its authority under § 302.101(c)(6) of this chapter, OPM hereby exempts these full-time positions created for developmental purposes connected with the SESCDP from the appointment procedures of part 302 of this chapter. Competition for these appointments must be conducted pursuant to SES merit staffing procedures at § 317.501 of this chapter, except that agencies must follow the principle of veterans' preference as far as administratively feasible, in accordance with § 302.101(c) of this chapter. Candidates serving under this Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis.

(2) An individual who currently holds a career or career-type appointment in the civil service must be selected through SES merit staffing procedures at § 317.501 of this chapter. Such an individual may be selected for and participate in an SESCDP in any agency while serving in his or her position of record. The individual may continue to participate in the SESCDP upon moving to other civil service positions under career or career-type appointment. An SESCDP competition does not satisfy the requirements of part 335 of this chapter and therefore does not provide an independent basis to appoint or promote a career or career-type appointee.

(3) A career or career-type appointee may participate in an SESCDP conducted by an agency other than his or her employing agency under such terms as are mutually agreeable and outlined in a Memorandum of Understanding (MOU) signed by both agencies involved. Terms of the MOU must be consistent with applicable

provisions of 5 U.S.C. chapter 41 and a copy must be provided to OPM. Either agency may decline or discontinue a candidate's participation if such terms cannot be negotiated or are not fulfilled.

(4) Any candidate's participation in an SESCDP is at the discretion of the employing agency and subject to provisions established under 5 CFR 412.302(a) for removing a participant who does not make adequate progress in the program.

(5) For purposes of this paragraph, a ''career-type'' appointment means a career or career-conditional appointment or an appointment of equivalent tenure. An appointment of equivalent tenure is considered to be an appointment in the excepted service that is placed in Group I or Group II under § 351.502(b) of this chapter.

## Subpart D—Executive Development

### § 412.401 Continuing executive development.

(a) Each agency must establish a program or programs for the continuing development of its senior executives in accordance with 5 U.S.C 3396(a). Such agency programs must include preparation, implementation, and regular updating of an Executive Development Plan (EDP) for each senior executive. The EDPs will:

(1) Function as a detailed guide of developmental experiences to help SES members, through participation in short-term and longer term experiences, meet organizational needs for leadership, managerial improvement, and organizational results;

(2) Address enhancement of existing executive competencies and such other competencies as will strengthen the executive's performance;

(3) Focus primarily on work-related experiences;

(4) Outline developmental opportunities and assignments to allow the individual to develop a broader perspective in the agency as well as Governmentwide; and

(5) Be reviewed annually and revised as appropriate by an ERB or similar body designated by the agency to oversee executive development, using input from the performance evaluation cycle.

(b) Consistent with 5 U.S.C. 3396(d) and other applicable statutes, EDPs may provide for executive sabbaticals and other long-term assignments outside the Federal sector.

[FR Doc. E8–20273 Filed 8–29–08; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–27628; Directorate Identifier 2007–CE–025–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company (Type Certificate Previously Held by Columbia Aircraft Manufacturing) Models LC40–550FG, LC41–550FG, and LC42–550FG Airplanes

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

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document makes a correction to a proposed airworthiness directive (AD), which was published in the **Federal Register** on August 7, 2008 (73 FR 45902), and applies to certain Cessna Aircraft Company (type certificate previously held by Columbia Aircraft Manufacturing) (Cessna) Models LC40–550FG, LC41–550FG, and LC42–550FG airplanes. This document proposed to revise AD 2007–07–06 with a new AD that would retain the actions currently required in AD 2007–07–06; allow installing access panels; and change the serial number applicability. The FAA incorrectly referenced the docket number of this proposed AD as ''FAA–2007–27268'' instead of ''FAA–2007–27628.'' This document corrects the docket number.

**DATES:** The comment period ending date of October 6, 2008, remains the same. The FAA will also address any comments relating to this proposed AD submitted to Docket No. FAA–2007–27268.

**FOR FURTHER INFORMATION CONTACT:** Jeff Morfitt, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, WA 98057; telephone: (425) 917–6405; fax: (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Discussion

On August 1, 2008, the FAA issued a notice of proposed rulemaking (NPRM) to revise AD 2007–07–06 with a new AD that would retain the actions currently required in AD 2007–07–06; allow installing access panels; and change the serial number applicability. This NPRM was published in the **Federal Register** on August 7, 2008 (73 FR 45902). The FAA incorrectly referenced the docket number of this proposed AD as ''FAA–2007–27268'' instead of ''FAA–2007–27628.'' This document corrects the docket number.

### Need for the Correction

This correction is needed to assure that all correspondence related to this subject is posted in the correct docket.

### Correction of Publication

Accordingly, the publication of August 7, 2008 (73 FR 45902), which was the subject of FR Doc. E8–18231, is corrected as follows:

On page 45902, in the third column, in the third line under the heading **DEPARTMENT OF TRANSPORTATION**, replace ''FAA–2007–27268'' with ''FAA–2007–27628.''

On page 45903, in the second column, in the seventh line under the heading **SUPPLEMENTARY INFORMATION**, replace ''FAA–2007–27268'' with ''FAA–2007–27628.''

### § 39.13 [Corrected]

On page 45904, in the third column, in the eighth and ninth lines under the heading **§ 39.13 [Amended],** replace ''FAA–2007–27268'' with ''FAA–2007–27628.''

Action is taken herein to correct this reference in the proposed AD.

The comment period ending date of October 6, 2008, remains the same. The FAA will also address any comments relating to this proposed AD submitted to Docket No. FAA–2007–27268.

Issued in Kansas City, Missouri, on August 25, 2008.

**Brian A. Yanez,**

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

[FR Doc. E8–20200 Filed 8–29–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–0453; Airspace Docket No. 08–AAL–12]**

## Proposed Establishment of Class E Airspace; Kwethluk, AK

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to establish Class E airspace at Kwethluk, AK. Two Standard Instrument Approach Procedures (SIAPs) are being developed for the Kwethluk Airport at Kwethluk, AK. Adoption of this proposal would result in creating Class E airspace upward from 700 feet (ft.)

and 1,200 ft. above the surface at the Kwethluk Airport, Kwethluk, AK.

**DATES:** Comments must be received on or before October 17, 2008.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0453/ Airspace Docket No. 08–AAL–12, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, 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 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking 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 proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0453/Airspace Docket No. 08–AAL–12.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara/index.html*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

## The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would establish Class E airspace at the Kwethluk Airport, in Kwethluk, AK. The intended effect of this proposal is to create Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Kwethluk Airport, Kwethluk, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has created two new SIAPs for the Kwethluk Airport. The SIAPs are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 18, Original and (2) the RNAV (GPS) RWY 36, Original. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Kwethluk Airport area would be established by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Kwethluk Airport, Kwethluk, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. 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 1, 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Kwethluk Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

**§ 71.1 [Amended]**

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

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Kwethluk, AK [New]**

Kwethluk, Kwethluk Airport, AK
(Lat. 60°47′25″ N., long. 161°26′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Kwethluk Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Kwethluk Airport, AK.

* * * * *

Issued in Anchorage, AK, on August 22, 2008.

**James Miller,**

*Acting Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–20311 Filed 8–29–08; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–0005; Airspace Docket No. 08–AAL–1]**

## Proposed Revision of Class E Airspace; Ruby, AK

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at Ruby, AK. One Standard Instrument Approach Procedure (SIAP) is being amended for the Ruby Airport at Ruby, AK. Adoption of this proposal would result in revising Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Ruby Airport, Ruby, AK.

**DATES:** Comments must be received on or before October 17, 2008.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0005/Airspace Docket No. 08–AAL–1, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, 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 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking 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 proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0005/Airspace Docket No. 08–AAL–1.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of Notice of Proposed Rulemakings (NPRMs)**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara/index.html*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would revise Class E airspace at the Ruby Airport, in Ruby, AK. The intended effect of this proposal is to revise existing Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Ruby Airport, Ruby, AK.

The FAA Instrument Flight Procedures Production and

Maintenance Branch has amended one SIAP for the Ruby Airport. The amended SIAP is the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 21, Amendment 2. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Ruby Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Ruby Airport, Ruby, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. 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 1, 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Ruby Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

### § 71.1 [Amended]

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

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Ruby, AK [Revised]**

Ruby, Ruby Airport, AK

(Lat. 64°43′38″ N., Long. 155°28′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Ruby Airport, AK, and 8 miles either side of the 051°(T)/070°(M) bearing from the Ruby Airport, AK, extending from the 6.4-mile radius to 20.3 miles northeast of the Ruby Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 70-mile radius of the Ruby Airport, AK.

* * * * *

Issued in Anchorage, AK, on August 22, 2008.

**James Miller,**

*Acting Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–20312 Filed 8–29–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Part 293

**RIN 1076–AE99**

## Class III Tribal State Gaming Compact Process

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Extension of comment period for proposed rule.

**SUMMARY:** On July 2, 2008, the Bureau of Indian Affairs (BIA) proposed a rule to establish procedures for Indian tribes and States to submit Tribal-State compacts and compact amendments, governing the conduct of class III gaming activities on the tribe's Indian lands located within that State, for review and approval by the Secretary of the Interior (see 73 FR 37907). This notice extends the comment period for that proposed rule by 20 days, to September 22, 2008.

**DATES:** The comment period for the proposed rule published on July 2, 2008 (73 FR 37907) is extended to September 22, 2008.

**ADDRESSES:** You may submit comments on the rule, identified by the number 1076–AE99, by any of the following methods:

- *Federal e-rulemaking portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 273–3153.
- *Mail:* Ms. Paula Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, 1849 C Street, NW., Mail Stop 3657–MIB, Washington, DC 20240.
- *Hand delivery:* Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, 1849 C Street, NW., Room 3657–MIB, Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday.

Note that requests for comments on the rule and the information collection are separate. Comments on the information collection requirements should be sent to: Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, by e-mail at *http://www.OIRA_DOCKET@omb.eop.gov,* or by facsimile at (202) 395–6566.

Please also send a copy of your comments on information collection requirements to the Office of Indian Gaming at the above address.

**FOR FURTHER INFORMATION CONTACT:** Paula Hart, Acting Director, Office of Indian Gaming, (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701–2721, was signed into law on October 17, 1988. IGRA, 25 U.S.C. 2710, authorizes class III gaming activities on Indian lands when authorized by an approved ordinance, located in a State that permits such gaming and conducted in conformance with a Tribal-State compact. IGRA, 25 U.S.C. 2710(d)(8)(A), (B) and (C), authorizes the Secretary to approve, disapprove or consider approved a Tribal-State compact or compact amendment and publish notice of that approval or considered approval in the **Federal Register**. The submission process for the Tribal-State compact or compact amendment is not clear. Therefore, BIA published a proposed rule on July 2, 2008 (73 FR 37907) to establish procedures for submitting Tribal-State compacts and compact amendments.

The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2, 9, and 2710. The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

Dated: August 26, 2008.

**George T. Skibine,**

*Acting Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs.*

[FR Doc. E8–20257 Filed 8–29–08; 8:45 am]

**BILLING CODE 4310–02–P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2700

### Procedural Rules

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** The Federal Mine Safety and Health Review Commission (the ''Commission'') is an independent adjudicatory agency that provides trials and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977 (2000) (the ''Mine Act''). Trials are held before the Commission's Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. The Commission is seeking suggestions for improving its procedures for processing requests for relief from default and reducing the number of cases in which a party seeks relief before the Commission after default.

**DATES:** Written and electronic comments must be submitted on or before November 3, 2008.

**ADDRESSES:** Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001. Persons submitting written comments shall provide an original and three copies of their comments. Electronic comments should state ''Comments on Advanced Notice of Proposed Rulemaking'' in the subject line and be sent to *mmccord@fmshrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, telephone 202–434–9935; FAX: 202–434–9944.

**SUPPLEMENTARY INFORMATION:** The Mine Act sets forth dual filing requirements for parties' contests of citations and orders and their associated proposed civil penalties. 30 U.S.C. 815(a), (d). The Commission has implemented these requirements in 29 CFR part 2700 subparts B and C. Subpart B sets forth the manner in which a party may contest a citation or order before the Secretary has proposed a civil penalty for the alleged violation described in the citation or order. Subpart C sets forth the manner in which a party may contest a civil penalty after a proposed penalty assessment has been issued. If a party chooses not to file a contest of a citation or order under subpart B, it may nonetheless contest the proposed penalty assessment under subpart C. In such circumstances, in addition to contesting the proposed penalty assessment, the party may challenge the fact of violation and any special findings alleged in the citation or order. *See* 29 CFR 2700.21(b) (''An operator's failure to file a notice of contest of a citation or order * * * shall not preclude the operator from challenging, in a penalty proceeding, the fact of violation or any special findings * * *.''); *Quinland Coals, Inc.,* 9 FMSHRC 1614, 1621–23 (Sept. 1987) (holding that fact of violation and special findings may be placed in issue by the operator in a civil penalty proceeding regardless of whether the operator has availed itself of the opportunity to file a contest proceeding under subpart B). However, if a party files a contest of a citation or order under subpart B, it must also file additional pleadings under subpart C in order to challenge the proposed penalty assessment related to the citation or order.

The Mine Act's dual filing requirements have often led to confusion by parties who may fail to timely file required documents and have their cases result in default. The Commission receives requests for relief from default that generally fall into two categories. Requests in the first category involve circumstances in which a party has failed to file a timely contest of a proposed penalty assessment and the proposed penalty thereby becomes a final order of the Commission by operation of section 105(a) of the Mine Act, 30 U.S.C. 815(a). Requests in the second category involve circumstances in which a Commission Administrative Law Judge issues a default order because a party has failed to file an answer to a petition for assessment of penalty filed by the Secretary of Labor. Currently, the large majority of requests for relief received by the Commission fall within the first category.

Under the Commission's present practice, requests for relief from default are directed to the Review Commission. In evaluating requests for relief from default, the Review Commission finds guidance in Rule 60(b) of the Federal Rules of Civil Procedure (''Rule 60(b)''). *See* 29 CFR 2700.1(b) (''the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure''); *Jim Walter Res., Inc.,* 15 FMSHRC 782, 787 (May 1993). The Review Commission has recognized that Rule 60(b) ''is a tool which * * * courts are to use sparingly * * *.'' *Id.* at 789 (citation omitted); *Atlanta Sand and Supply Co.,* 30 FMSHRC__, slip op. at 4, No. SE 2008–327–M (July 16, 2008). The Review Commission has also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.,* 17 FMSHRC 1529, 1530 (Sept. 1995).

Upon application of this standard, if the Review Commission concludes that a request for relief is potentially sufficient on its face to support reopening, but cannot conclusively determine from the record whether relief should be granted, it remands the matter to the Chief Administrative Law Judge. The Chief Administrative Law Judge exercises his discretion to engage in any further fact-finding and determines whether good cause exists for a failure to timely respond. If the

Judge finds good cause, the case proceeds pursuant to the Mine Act and the Commission's Procedural Rules in 29 CFR part 2700.

In January 2006, while considering changes to its procedural rules, the Commission determined that its procedures for processing requests for relief should be made more efficient through informal means rather than through the rulemaking process. 71 FR 553, 554, Jan. 5, 2006. The Commission explained that such informal means include making available a summary of the Commission's procedural rules described in simple terms and placing on the Commission's Web site (*www.fmshrc.gov*) a page of frequently asked questions and answers regarding Commission procedure. *Id.*

The Commission has since employed a number of informal means in an effort to reduce the number of cases resulting in default. For instance, it has worked with the Department of Labor's Mine Safety and Health Administration (''MSHA'') to clarify instructions provided to parties for the filing of various documents, including the filing of a contest of a proposed penalty assessment. The Commission did so believing that if such instructions were clearer, parties would be more likely to timely file their documents and avoid default.

In addition, the Commission has created and made available three guides to Commission proceedings intended to clarify Commission procedure. The first guide, ''How a Case Proceeds before the Commission,'' provides charts and summaries of procedural requirements for different types of proceedings before the Commission. The second guide, ''Frequently Asked Questions,'' provides a wide variety of information pertaining to Commission procedure in question and answer format. It includes a section devoted to problems in contesting penalties and provides parties with information for seeking relief from a proposed penalty assessment that becomes a final Commission order after the party failed to file a timely contest of a proposed penalty assessment. The third guide, ''Guide to Commission Proceedings,'' describes Commission proceedings in simple terms. The Commission has made these guides available on its Web site (*http://www.fmshrc.gov/guides/guides.html*). It intends to publish and distribute a paper compilation of the three guides in the near future.

Although the Commission has taken such actions, it has been receiving an increasingly large number of requests for relief from operators large and small, who have failed to file a timely contest of a proposed penalty assessment. As a result, the Commission is exploring additional means for improving its handling of requests for relief and for decreasing the number of cases that result in default.

One of the Commission's key considerations is whether it should set forth requirements for requesting relief from default in a rule, or whether further guidance should be provided in an informal document. In order to aid its consideration, the Commission is requesting comment from members of the interested public. In considering the feasibility of promulgating a rule pertaining to requests for relief from default, the Commission invites the public to consider any or all of the following questions. Members of the public are not limited to commenting on these questions and may offer any suggestion related to the subject.

*Scope of Rule:* Should a rule be limited to requests for relief from citations and orders that have become final by operation of section 105(a) of the Mine Act when a party failed to timely file a contest of a proposed penalty assessment? Should the rule also address requests for relief from a default order issued by an administrative law judge after a party has failed to timely file an answer to the Secretary of Labor's petition for assessment of penalty? To what extent should the rule be modeled on Rule 60(b)?

*Time Limitations:* When should a request for relief be filed? To what extent should a rule follow the time limitations set forth in Rule 60(b)? How should the Commission interpret the ''reasonable time'' requirement of Rule 60(b)? Should the one-year time limitation pertaining to Rule 60(b)(1), (2), and (3) be applied in certain circumstances? When an order becomes final by operation of Mine Act section 105(a), what effect should an operator's receipt of a delinquency notice from MSHA have on the time within which the operator should file a motion to reopen?

*Standard for Relief:* What standard should apply to entitle a party to relief? In determining whether to grant relief, how closely should the Commission be guided by federal case law interpreting Rule 60(b)? Should the Commission require a movant to set forth specific facts which support the grounds alleged under Rule 60(b) and, if so, what level of specificity should be required? Should the Commission require a movant to show a meritorious claim or defense as a prerequisite to granting relief? Should the Commission also be guided by the standard for setting aside defaults in Rule 55(c) of the Federal Rules of Civil Procedure? Should the Commission apply a different standard depending upon certain factors relating to the movant, such as whether the movant is represented by counsel, or the size of an operator?

*Documentation:* Should a rule require that allegations be established by sworn written statements by individuals with personal knowledge of the facts and/or other sufficiently reliable documentation? Should a rule require that the movant include in its request for relief copies of all relevant documents in its possession including, but not limited to, the proposed penalty assessment? Should the signature of an attorney on a request for relief be treated as a substitute for any required documentation?

*Process:* Should requests for relief be filed directly with the Chief Administrative Law Judge or with the Review Commission? What service requirements should apply?

**Public Review of Comments**

All comments responding to this notice will be a matter of public record and available for public inspection and copying by appointment with Ella Waymer, between the hours of 9 a.m. and 5 p.m. on business days at the Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., 9th Floor, Room 9536, Washington, DC 20001; telephone 202–434–9935.

Dated: August 27, 2008.

**Michael F. Duffy,**

*Chairman, Federal Mine Safety and Health Review Commission.*

[FR Doc. E8–20235 Filed 8–29–08; 8:45 am]

BILLING CODE 6735–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R08–OAR–2008–0340; FRL–8700–6]**

### Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revised Transportation Conformity Consultation Process, and Approval of Related Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on June 26, 2007 and April 17, 2008. The June 26, 2007 revision updates

Section XII of the Utah SIP and Rule R307–110–20 of the Utah Administrative Code (UAC) to meet the federal transportation conformity consultation requirements. The amended Rule R307–110–20 incorporates by reference Section XII, ''Transportation Conformity Consultation,'' of the SIP. The April 17, 2008 revision makes minor changes to UAC sections R307–101–2, ''Definitions;'' R307–115–1, ''Determining Conformity;'' R307–170–7, ''Performance Specification Audits;'' and R307–310–2, ''Definitions;'' and adds R307–101–3, ''Version of CFR Incorporated by Reference.'' In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**DATES:** Written comments must be received on or before October 2, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2008–0340, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: kimes.jeffrey@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Kimes, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6445, *kimes.jeffrey@epa.gov*.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: July 25, 2008.

**Judith Wong,**

*Acting Deputy Regional Administrator, Region 8.*

[FR Doc. E8–20142 Filed 8–29–08; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2006–0714, FRL–8701–5]**

### Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve minor administrative changes to local rules that address permitting requirements.

**DATES:** Any comments on this proposal must arrive by October 2, 2008.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2006–0714, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
- *E-mail: R9airpermits@epa.gov.*
- *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

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

**FOR FURTHER INFORMATION CONTACT:** Laura Yannanon, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3534, *yannayon.laura@epa.gov*.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the approval of AVAQMD Rules 101, 102, 106, 108, 109, 208, 210, 212, 218, 220, 221, and 226. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 11, 2008.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E8–20132 Filed 8–29–08; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[EPA–HQ–OAR–2007–0562; FRL–8709–2]**

## EPA Responses to State and Tribal 2006 24-Hour $PM_{2.5}$ Designation Recommendations: Notice of Availability and Public Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability and public comment period.

**SUMMARY:** Notice is hereby given that the EPA has posted its responses to state and tribal designation recommendations for the 2006 24-hour fine particles ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) on its Internet Web site at *http://www.epa.gov/pmdesignations/2006standards/index.htm.* EPA invites public comments on its responses during the 30-day comment period specified below. EPA sent responses directly to the states on August 19 and tribes on or around August 20, 2008, and plans to make final designation determinations for the 2006 24-hour $PM_{2.5}$ NAAQS by December 18, 2008.

**DATES:** Comments must be received on or before October 2, 2008. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR–2007–0562, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov. Attention Docket ID No. EPA–HQ–OAR–2007–0562.*
- *Fax:* 202–566–9744. *Attention Docket ID No. EPA–HQ–OAR–2007–0562.*
- *Mail:* Air Docket, *Attention Docket ID No. EPA–HQ–OAR–2007–0562,* Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0562. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The *http://www.regulations.gov* Web site is ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA is unable to read your comment and contact you for clarification due to technical difficulties, 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 home page at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section II of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, 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 Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For general questions concerning this action, please contact Ben Gibson, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C504–01, Research Triangle Park, NC 27711, telephone (919) 541–3065, e-mail at *gibson.ben@epa.gov.* For questions regarding EPA Region 1, please contact Alison Simcox, U.S. EPA, telephone (617) 918–1684, e-mail at *simcox.alison@epa.gov.* For questions regarding EPA Region 2, please contact Kenneth Fradkin, U.S. EPA, telephone (212) 637–3702, e-mail at *fradkin.kenneth@epa.gov.* For questions regarding EPA Region 3, please contact Maria Pino, U.S. EPA, telephone (215) 814–2181, e-mail at *pino.maria@epa.gov.* For questions regarding EPA Region 4, please contact Steve Scofield, U.S. EPA, telephone (404) 562–9034, e-mail at *scofield.steve@epa.gov.* For questions regarding EPA Region 5, please contact John Summerhays, U.S. EPA, telephone (312) 886–6067, e-mail at *summerhays.john@epa.gov.* For questions regarding EPA Region 6, please contact Joe Kordzi, U.S. EPA, telephone (214) 665–7186, e-mail at *kordzi.joe@epa.gov.* For questions regarding EPA Region 7, please contact Amy Algoe-Eakin, U.S. EPA, telephone (913) 551–7942, e-mail at *algoe-eakin.amy@epa.gov.* For questions regarding EPA Region 8, please contact Catherine Roberts, U.S. EPA, telephone (303) 312–6025, e-mail at *roberts.catherine@epa.gov.* For questions regarding EPA Region 9, please contact Eleanor Kaplan, U.S. EPA, telephone (415) 947–4147, e-mail at *kaplan.eleanor@epa.gov.* For questions regarding EPA Region 10, please contact Krishna Viswanathan, U.S. EPA, telephone (206) 553–2684, e-mail at *viswanathan.krishna@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. What Should I Consider as I Prepare My Comments for EPA?*

1. *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 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. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, e-mail at *morales.roberto@epa.gov,* Attention: Docket ID No. OAR–2007–0562.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

## II. Background

The process for designating areas following promulgation of a new or revised NAAQS is contained in Clean Air Act (CAA) Section 107(d) (42 U.S.C. 7407). Following the promulgation of a new or revised standard, each Governor or Tribal Leader has an opportunity to recommend air quality designations, including the appropriate boundaries for nonattainment areas, to EPA. EPA considers these recommendations as part of its duty to promulgate the formal area designations and boundaries for the new or revised standards. By no later than 120 days prior to promulgating designations, EPA is required to notify states or tribes of any intended modification to an area designation or boundary recommendation that EPA deems necessary. On or around August 19 and 20, 2008, EPA notified states and tribes of its intended area designations for the 2006 24-hour $PM_{2.5}$ NAAQS. States and tribes now have an opportunity to demonstrate why they believe a modification proposed by EPA may be inappropriate. In these responses, EPA encourages states and tribes to provide comments and additional information for consideration by EPA in finalizing designations. EPA plans to make final designation determinations for the 2006 24-hour $PM_{2.5}$ NAAQS by December 18, 2008.

The purpose of this notice is to solicit public comments from interested parties other than states and tribes on EPA's recent responses to the state and tribal designation recommendations for the 2006 24-hour $PM_{2.5}$ NAAQS. CAA Section 107(d) provides a process for designations that involves recommendations by states and tribes to EPA and responses from EPA to those parties, prior to EPA promulgating final designations and boundaries. EPA is not required under CAA Section 107(d) to seek public comment during the designation process, but is electing to do so for the 2006 24-hour $PM_{2.5}$ NAAQS in order to gather additional information for EPA to consider before making final designations. EPA invites public comment on its responses to states and tribes during the 30-day comment period provided in this notice. Due to the statutory timeframe for promulgating designations set out in CAA Section 107(d), EPA will not be able to consider any comments submitted after October 2, 2008, notwithstanding what may have appeared in any state-specific announcements. This notice and opportunity for public comment does not affect any rights or obligations of any state, tribe or the EPA which might otherwise exist pursuant to CAA section 107(d).

Please refer to the **ADDRESSES** section above in this document for specific instructions on submitting comments and locating relevant public documents.

- In providing comments to EPA please consider the agency's charge under CAA section 107(d). Under this section, EPA is obligated to identify every area as attainment, nonattainment, or unclassifiable. Further, in establishing nonattainment area boundaries, the agency is required to identify the area that does not meet the 2006 $PM_{2.5}$ 24-hour standard and any nearby area that is contributing to the area that does not meet that standard. If you believe that a specific geographic area that EPA is proposing to identify as a nonattainment area should not be categorized by the section 107(d) criteria as nonattainment, or if you believe that a specific area not proposed by EPA to be identified as a nonattainment area should in fact be categorized as nonattainment using the section 107(d) criteria, please be as specific as possible in supporting your belief.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## III. Internet Web Site for Rulemaking Information

The EPA has also established a Web site for this rulemaking at *http://www.epa.gov/pmdesignations/2006standards/index.htm.* The Web site includes EPA's state and tribal designation recommendations, as well as the rulemaking actions and other related information that the public may find useful.

Dated: August 20, 2008.

**Jenny Noonan Edmonds,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. E8–20241 Filed 8–29–08; 8:45 am]

BILLING CODE 6560–50–P

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## OFFICE OF PERSONNEL MANAGEMENT

### 48 CFR Part 1652

**RIN 3206–AL66**

## Federal Employees Health Benefits Program Acquisition Regulation: Miscellaneous Clarifications and Corrections

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees Health Benefits Acquisition Regulations (FEHBAR). The rule clarifies the rate setting process for community rated carriers with respect to Similarly Sized Subscriber Groups (SSSG) and removes the ban on adjustments based on rate reconciliation for the final year of Federal Employees Health Benefits Program (FEHBP) contracts.

**DATES:** Comments must be received on or before: October 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Edward M. DeHarde, Senior Policy Analyst at 202–606–0004, or e-mail *Edward.DeHarde@opm.gov.*

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN

number by any of the following methods:

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

• *Mail:* Edward M. DeHarde, Senior Policy Analyst, Insurance Policy Group, Office of Personnel Management, 1900 E Street, NW., Room 3415, Washington, DC 20415.

**SUPPLEMENTARY INFORMATION:** The purpose of this proposed regulation is to clarify requirements with respect to the rate setting process for community rated carriers and to require rate reconciliation for the final contract term for community rated carriers that leave the FEHBP.

In prior years, carriers were not subjected to rate reconciliation in the final year of their contracts. Information technology and electronic transmission and storage of data now make it possible to efficiently perform rate reconciliation for the final contract year. Therefore, OPM will begin conducting such rate reconciliation on community rated contracts that terminate after January 1, 2009.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because all the small plan FEHBP contracts fall below the threshold for submitting cost or pricing data.

**Executive Order 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**Lists of Subjects in 48 CFR Parts 1652**

Government employees, Government procurement, Health insurance, Reporting and recordkeeping requirements.

Office of Personnel Management.

**Michael W. Hager,**

*Acting Director.*

Accordingly, OPM proposes to amend chapter 16 of title 48, CFR as follows:

## PART 1652—CONTRACT CLAUSES

1. The authority citation for part 1652 continues to read as follows:

**Authority:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 1652.2—Texts of FEHBP Clauses

2. Amend § 1652.216–70 by revising paragraphs (b)(2) through (b)(4) and (b)(6), and adding paragraphs (b)(7) and (b)(8) to read as follows:

**1652.216–70 Accounting and price adjustment.**

* * * * *

(b) * * *

(2) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier's similarly sized subscriber groups (SSSGs) as defined in FEHBAR 1602.170–13. The subscription rates shall be determined according to the carrier's established policy which must be applied consistently to the FEHBP and to the carrier's similarly sized subscriber groups (SSSGs). If an SSSG receives a rate lower than that determined according to the carrier's methodology, it is considered a discount. The FEHBP must receive a discount equal to or greater than the carrier's largest SSSG discount.

(3) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the lower of the two SSSGs, the carrier may include an adjustment to the Federal group's rates for the next contract period, except as noted in paragraph (b)(7) of this clause.

(4) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the lower of the two SSSGs, the Carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the lower rated SSSG, except as noted in paragraph (b)(7) of this clause.

* * * * *

(6) For contract years beginning on or after January 1, 2009, in the event this contract is not renewed, the final rate reconciliation will be performed. The carrier must promptly pay any amount owed to OPM. Any amount recoverable by the carrier is limited to the amount in the contingency reserve for the terminating plan as of December 31 of the terminating year.

(7) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to SSSGs. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(8) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation process irrespective of whether surcharges are applied to the SSSGs.

[FR Doc. E8–20269 Filed 8–29–08; 8:45 am]

BILLING CODE 6325–39–P

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### 48 CFR Part 9904

### Harmonization of Cost Accounting Standards 412 and 413 With the Pension Protection Act of 2006

**ACTION:** . Advance Notice of Proposed Rulemaking.

**SUMMARY:** The Office of Federal Procurement Policy, Cost Accounting Standards Board, invites public comments concerning an Advance Notice of Proposed Rulemaking on the harmonization of Cost Accounting Standards 412 and 413 with the Pension Protection Act of 2006.

**DATES:** Comments must be in writing and must be received by November 3, 2008.

**ADDRESSES:** The full text of the Advance Notice of Proposed Rulemaking, including the Board's response to public comments on the Staff Discussion Paper and the draft proposed amendments to Cost Accounting Standards 412 and 413, is available at: *http://www.whitehouse.gov/omb/procurement/casb/2008_anprm.pdf* and *http://www.regulations.gov.*

All comments to this Advance Notice of Proposed Rulemaking must be in writing. Due to delays in the receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted in any one of three ways:

1. Comments may be directly sent via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''CAS Pension Harmonization ANPRM'' (without quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments;

2. Comments may be included in an e-mail message sent to *casb2@omb.eop.gov.* The comments may be submitted in the text of the e-mail message or as an attachment; or

3. Comments may also be submitted via facsimile to (202) 395–5105.

Be sure to include your name, title, organization, postal address, telephone number, and e-mail address in the text of your public comment and reference ''CAS Pension Harmonization ANPRM'' in the subject line. Comments received by the date specified above will be included as part of the official record.

Please note that all public comments received will be available in their entirety at *http://www.whitehouse.gov/omb/procurement/casb/index_public_comments.htm*l and *http://www.regulations.gov* after the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Eric Shipley, Project Director, Cost Accounting Standards Board (telephone: 410–786–6381).

**SUPPLEMENTARY INFORMATION:**

## A. Regulatory Process

Rules, Regulations and Standards issued by the Cost Accounting Standards Board (Board) are codified at 48 CFR Chapter 99. The Office of Federal Procurement Policy Act, 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard (CAS or Standard), complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking.
3. Promulgate a Notice of Proposed Rulemaking.
4. Promulgate a Final Rule.

This Advance Notice of Proposed Rulemaking is step two of the four-step process.

## B. Background and Summary

The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board, is today releasing an Advance Notice of Proposed Rulemaking (ANPRM) on the harmonization of Cost Accounting Standards (CAS) 412 and 413 with the Pension Protection Act (PPA) of 2006 (Pub. L. 109–280, 120 Stat. 780). The Office of Procurement Policy Act, 41 U.S.C. 422(g)(1), requires the Board to consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard prior to the promulgation of any new or revised CAS.

The PPA amended the minimum funding requirements and tax-deductibility of contributions to pension plans under the Employee Retirement Income Security Act of 1974 (ERISA). The PPA requires the Board to revise Standards 412 and 413 of the CAS to harmonize with the amended ERISA minimum required contribution not later than January 1, 2010.

On July 3, 2007, the Board published a Staff Discussion Paper (72 FR 36508) in accordance with 41 U.S.C. 422(g) to solicit public views with respect to the Board's statutory requirement to ''harmonize'' CAS 412 and 413 with the PPA. Differences between CAS 412 and 413 and the PPA, as well as issues associated with pension harmonization were identified in the Staff Discussion Paper (SDP). Respondents were invited to identify and comment on any issues related to pension harmonization that they felt were important. The SDP identified issues related to pension harmonization and did not necessarily represent the position of the Board.

The SDP noted basic conceptual differences between the CAS and the PPA that affect all contracts and awards subject to CAS 412 and 413. The PPA utilizes a settlement or liquidation approach to value pension plan assets and liabilities, including the use of accrued benefit obligations and interest rates based on current corporate bond rates. On the other hand, CAS utilizes the going concern approach to plan asset and liability valuations, *i.e.*, assumes the company (or in this case the pension plan and trust) will continue in business, and follows accrual accounting principles that incorporate long-term, going concern assumptions about future asset returns, future years of employees' service, and future salary increases. These assumptions about future events are absent from the settlement approach.

The full text of the public comments to the SDP is available at: *http://www.whitehouse.gov/omb/procurement/casb/index_public_comments.html* under ''Combined Public Comments on the Staff Discussion Paper on the Harmonization of Cost Accounting Standards 412 and 413 with the Pension Protection Act of 2006,'' and *http://www.regulations.gov.*

The Board believes that the accounting for pension costs for contract costing purposes should continue to reflect the long-term nature of the pension plan for a going-concern. The Cost Accounting Standards are intended to provide cost data not only to determine the incurred cost for the current period, but also to provide consistent and reasonable cost data for forward-pricing contracts over the near future. Financial statement accounting, on the other hand, is intended to report the change in an entity's financial position and results of operations during the current period. ERISA does not prescribe a unique cost or expense for a period. The minimum required contribution rules of ERISA, as amended by the PPA, instead require that the plan achieves funding of its current settlement liability within a short period of time. On the other hand, the ERISA tax-deductible maximum contribution is based on the plan's long-term benefit levels plus a reserve against adverse experience. ERISA permits the entity a wide contribution range that allows the company to set long-term financial management decisions on the funding of the ongoing pension plan.

The Board recognizes that contract cost accounting for a going concern must, nevertheless, address the risk associated with inadequate funding of a plan's settlement liability and therefore proposes implementation of a minimum liability based on the accrued benefits valued based on corporate bond rates. Furthermore, harmonization with the PPA minimum required contribution, which is based on the ERISA ''funding target'' and ''target normal cost,'' will help alleviate the disparity in timing between ERISA's minimum funding requirements and recognition of such required funding in contract costing. Once harmonization is achieved, maintaining the going concern basis for contract costing allows contractors to set long-term funding goals that avoid undue cost/contribution volatility.

The Board continues to believe that issues of benefit design, investment strategy, and financial management decisions for the pension plan fall under the contractor's purview. The Board also believes that the Cost Accounting Standards must remain sufficiently robust to accommodate evolving changes in financial statement reporting and theory as well as Congressional changes to ERISA.

After considering the effects of accelerating recognition of actuarial gains and losses, the Board proposes changing the amortization period for gains and losses to a 10-year amortization period from its current 15-year period to provide more timely adjustment of plan experience while not introducing unmanageable volatility. This shorter amortization period also more closely follows the 7-year period

required by ERISA to fully fund the plan's settlement liability.

In assessing the potential for volatility that would adversely impact forward pricing, the Board noted that for pension plans that are close to being fully funded, the sudden and unpredictable elimination or emergence of significant pension costs has been problematic for many years. Accordingly, the Board proposes to revise the ''assignable cost limitation'' so that it does not apply until the actuarial value of assets equals or exceeds 125% of the actuarial accrued liability plus normal cost. In addition, the actuarial gains that give rise to surplus assets will be amortized over 10 years and will reduce the surplus in an orderly and timely fashion.

The Board proposes a specific transition method for implementing harmonization. This transition method would apply to all contractors subject to CAS 412 and 413 through full CAS-coverage or Federal Procurement Regulation (FAR) § 31.205–6(j). The proposed transition will phase-in revisions to the liability and normal cost measurement and to the amortization periods during the first 5 years as new contracts are priced and awarded so that the cost effects of harmonization are gradually recognized.

The proposed transition phase-in lasts for a specific 5-year period that tracks the typical contracting cycle. More importantly, the proposed transition phase-in should provide at least partial harmonization relief for contractors with contracts that are exempt from CAS-Coverage. At the same time the proposed phase-in provisions are intended to make the possible cost increases due to harmonization more manageable for the procuring agencies.

The draft proposed rule allows companies to use the same actuarial methods and valuation software for ERISA, financial statement and government contract costing purposes. Except for the interest rate, the same general set of actuarial assumptions can be used for all three purposes. This will allow agencies and government auditors to place reliance on data from ERISA and financial statement valuations, and allow contractors to avoid unnecessary actuarial effort and expense.

### C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this draft proposed rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The records required by this draft proposed rule are those normally maintained by contractors who claim reimbursement of post-retirement benefit costs under government contracts.

### D. Executive Order 12866 and the Regulatory Flexibility Act

Because most contractors must measure and report their post-retirement benefit liabilities and expenses in order to comply with the requirements of SFAS 106 for financial accounting purposes, the economic impact of this draft proposed rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this draft proposed rule will not result in the promulgation of an ''economically significant rule'' under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this draft proposed rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this draft proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

**Paul A. Denett,**

*Chairperson, Cost Accounting Standards Board.*

[FR Doc. E8–20255 Filed 8–29–08; 8:45 am]

BILLING CODE 3110–01–P

# Notices

Federal Register

Vol. 73, No. 170

Tuesday, September 2, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 27, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Rural Utilities Service

*Title:* Accounting Requirements for RUS Electric and Telecommunications Borrowers.

*OMB Control Number:* 0572–0003.

*Summary of Collection:* Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture that makes loans (direct and guaranteed) to finance electric and telecommunications facilities in rural areas. Currently, there are approximately 685 active electric borrowers and 737 RUS telecommunications borrowers. RUS does not own or operate rural electric facilities. Its function is to provide, through self-liquidating loans and technical assistance, adequate and dependable electric and telecommunications service to rural people under rates and conditions that permit productive use of these utility services. RUS borrowers, as all businesses, need accounting systems for their own internal use as well as external use. Such records are maintained as part of normal business practices. Without systems, no records would exist, for example, or what they own or what they owe. Such records systems provide borrowers with information that is required by the manager and board of directors to operate on a daily basis, to complete their tax returns, and to support requests to state regulatory commissions for rate approvals.

*Need and Use of the Information:* RUS collects information to evaluate a borrower's financial performance, to determine whether current loans are at risk, and to determine the credit worthiness of future loans. If basic financial records were not maintained, the borrower, its investors, and RUS would be unable to evaluate a borrower's financial performance.

*Description of Respondents:* Not-for-profit institutions; business or other for-profit.

*Number of Respondents:* 1,176.

*Frequency of Responses:* Recordkeeping; Reporting: On Occasion.

*Total Burden Hours:* 31,752.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E8–20244 Filed 8–29–08; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2008–0091]**

### Notice of Request for Extension of Approval of an Information Collection; Citrus From Peru

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of citrus from Peru.

**DATES:** We will consider all comments that we receive on or before November 3, 2008.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0091* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0091, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0091.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be

sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

**FOR FURTHER INFORMATION CONTACT:** For information on regulations for the importation of citrus from Peru, contact Mr. Juan A. Roman, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133 Riverdale, MD 20737; (301) 734–8758. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 851–2908.

**SUPPLEMENTARY INFORMATION:**

*Title:* Citrus From Peru.

*OMB Number:* 0579–0289.

*Type of Request:* Extension of approval of an information collection

*Abstract:* The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–47).

Under these regulations, fresh commercial fruit (grapefruit, limes, mandarins or tangerines, sweet oranges, and tangelos) from Peru is subject to certain conditions before entering the United States to prevent the introduction of plant pests into the United States. The regulations require the use of information collection activities, including inspections by national plant protection organization officials from Peru, grower registration and agreement, fruit fly trapping, monitoring, and recordkeeping, and a phytosanitary certificate.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 18.621848 hours per response.

*Respondents:* National plant protection organization officials of Peru and growers of citrus fruit in Peru.

*Estimated annual number of respondents:* 53.

*Estimated annual number of responses per respondent:* 11.226415.

*Estimated annual number of responses:* 595.

*Estimated total annual burden on respondents:* 11,080 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 26th day of August 2008.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E8–20286 Filed 8–29–08; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2008–0089]**

### Notice of Request for Extension of Approval of an Information Collection; Importation of Peppers From Certain Central American Countries

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of peppers from certain Central American countries.

**DATES:** We will consider all comments that we receive on or before November 3, 2008.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0089* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0089, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0089.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

**FOR FURTHER INFORMATION CONTACT:** For information on regulations for the importation of peppers from certain Central American countries, contact Mr. Juan A. Roman, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (301) 734–8758. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

**SUPPLEMENTARY INFORMATION:**

*Title:* Importation of Peppers From Certain Central American Countries.

*OMB Number:* 0579–0274.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations

authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–47).

Under these regulations, peppers from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua are subject to certain conditions before entering the United States to prevent the introduction of plant pests into the United States. The regulations require the use of information collection activities including inspections by Central American national plant protection organization officials, fruit fly trapping, monitoring, and recordkeeping, box labeling, and a phytosanitary certificate.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.0037936 hours per response.

*Respondents:* National plant protection organization officials and growers and shippers of peppers in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.

*Estimated annual number of respondents:* 245.

*Estimated annual number of responses per respondent:* 3,226.653.

*Estimated annual number of responses:* 790,530.

*Estimated total annual burden on respondents:* 2,999 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 26th day of August 2008.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E8–20288 Filed 8–29–08; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2008–0098]**

### Solicitation of Letters of Interest To Participate in Biotechnology Quality Management System Pilot Project

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service is soliciting letters of interest to participate in a voluntary pilot project for its Biotechnology Quality Management System (BQMS). The BQMS is a voluntary compliance assistance program designed to help stakeholders develop sound management practices, thus enhancing compliance with the regulatory requirements for field trials and movement of genetically engineered organisms in 7 CFR part 340. The Pilot Development Project will test the applicability of a biotechnology quality management audit standard and accompanying guidelines and assist APHIS in further development of BQMS. APHIS' goal for the pilot project is to obtain feedback from participants on the strengths and areas for improvement to the audit standard and guidelines prior to full implementation of the system.

**DATES:** Letters of interest will be accepted from September 2, 2008, to October 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dr. Edward Jhee, Biotechnology Quality Management System Program Manager, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 91, Riverdale, MD 20737–1236; (301) 734–6356, *edward.m.jhee@aphis.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS), regulates the introduction—meaning the importation, interstate movement, and environmental release—of genetically engineered (GE) organisms that are, or may be, plant pests. It is essential that applicants approved to introduce regulated GE organisms comply with all APHIS regulations and permit conditions. To improve compliance, APHIS is developing a voluntary, audit-based compliance assistance program known as the Biotechnology Quality Management System (BQMS). BQMS will help universities, small businesses, and large companies develop sound management practices to enhance compliance with the regulatory requirements for field trials and movements of GE organisms in 7 CFR part 340.

APHIS is seeking voluntary participants for a BQMS pilot project who will serve as a broad representation of the regulated community. APHIS will select participants who are:

(1) Currently conducting regulated environmental field release and movements under notification or permit, and who

(2) Intend to apply for a renewal or new notification or permit, annually, for the next 3 years.

APHIS will select one applicant from each of the following three categories to participate in the pilot project: One applicant from a large corporate business (greater than 50 employees), 1 applicant from a small business (less than 15 employees), and 1 applicant from an academic institution.

Participants in the BQMS Pilot Development Project will review the BQMS process and provide feedback. Specifically, participants will test the feasibility of the BQMS standards and guidelines by developing and implementing a quality management system for their organization that proactively manages regulated movement and field releases. Participating in the quality management system will demonstrate an organization's commitment to regulatory accountability, increased transparency, and identification and implementation of measures to minimize the occurrence of compliance infractions.

A draft audit standard for the BQMS program and a series of guidelines to assist participants in using this compliance assistance program to proactively comply with APHIS regulations are presently undergoing a technical review with audit industry experts. This review will be completed before the pilot project begins.

Organizations that wish to participate in the BQMS Pilot Development Project

should submit a letter of interest (1–2 pages) that includes the following:

(1) A short description of current active notifications and permits; and

(2) A statement of the organization's commitment to:

- Develop and implement a BQMS program within their organization;
- Attend all required training sessions on the development and implementation of a BQMS to be held by APHIS-BRS-Regulatory Operations Programs (ROP);
- Establish methods and procedures for monitoring critical processes and procedures for the movement and field testing of regulated GE agriculture;
- Provide required data and provide feedback to APHIS-BRS-ROP on how to improve the BQMS program standard and guidelines;
- Participate in surveys after completing training modules; and
- Submit to a third-party external verification audit.

APHIS will accept letters of interest through October 1, 2008. APHIS will evaluate letters and notify all applicants of its final selections. You may submit participation letters of interest by mail or e-mail to the person listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this notice.

Done in Washington, DC, this 26th day of August 2008.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E8–20285 Filed 8–29–08; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2008–0054]**

### University of Florida; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Papaya Genetically Engineered for Resistance to the Papaya Ringspot Virus

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the University of Florida seeking a determination of nonregulated status for papaya genetically engineered for resistance to the papaya ringspot virus derived from a transformation event designated as X17–2. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting comments on whether this genetically engineered papaya is or could be a plant pest. We are also making available for public comment a draft environmental assessment for the proposed determination of nonregulated status.

**DATES:** We will consider all comments we receive on or before November 3, 2008.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS=2008 =0054* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0054, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0054.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. John Cordts, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5531, e-mail: *john.m.cordts@aphis.usda.gov.* To obtain copies of the petition or the environmental assessment, contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.* The petition and the environmental assessment are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/04_33701p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/04_33701p_ea.pdf.*

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason To Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On December 2, 2004, APHIS received a petition seeking a determination of nonregulated status (APHIS No. 04–337–01p) from the University of Florida, Institute of Food and Agricultural Sciences (UFL–IFAS) of Homestead, FL, for papaya (*Carica papaya* L.) designated as transformation event X17–2, which has been genetically engineered for resistance to the papaya ringspot virus (PRSV), stating that papaya line X17–2 does not present a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340. UFL–IFAS responded to APHIS' subsequent requests for additional information and clarification and submitted revisions to their petition on January 12, 2007, and June 14, 2007. The petition is available for public review and comment.

**Analysis**

As described in the petition, papaya transformation event X17–2 has been genetically engineered with a sequence from the PRSV. This sequence was derived from the PRSV coat protein (*cp*) gene and introduced into X17–2 papaya along with one plant-expressed selectable marker gene, *nptII,* via *Agrobacterium*-mediated transformation. The marker gene is commonly used and enables researchers to select those plant tissues that have been successfully transformed with the gene of interest. The resistance to PRSV appears to be conferred through post transcriptional gene silencing.

Transformation event X17–2 has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. X17–2 papaya has been field tested in the United States since 1999 under notifications authorized by the U.S. Department of Agriculture (USDA). APHIS has presented two alternatives in the draft environmental assessment (EA) based on its analyses of data submitted by UFL–IFAS, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS may: (1) Take no action (X17–2 papaya remains a regulated article); or (2) deregulate X17–2 papaya in whole (the preferred alternative).

In section 403 of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition broadly to cover direct or indirect injury, disease, or damage not just to agricultural crops, but also to other plant parts and plant products whether natural, manufactured, or processed.

X17–2 papaya is subject to regulation by other Federal agencies. Under the Coordinated Framework for the Regulation of Biotechnology, the U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In order to be registered as a pesticide under FIFRA, it must be demonstrated that when used with common practices, a pesticide will not cause unreasonable adverse effects in the environment. Because the use of Plant Incorporated Protectants (PIP), such as viral coat proteins, is considered pesticidal, the University of Florida has submitted a registration package to EPA for X17–2 papaya.

Under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), pesticides added to (or contained in) raw agricultural commodities generally are considered to be unsafe unless a tolerance or exemption from tolerance has been established. Residue tolerances for pesticides are established by EPA under the FFDCA, and the U.S. Food and Drug Administration (FDA) enforces the tolerances set by EPA. EPA has previously granted a tolerance exemption for PRSV coat protein in papaya.

The FDA policy statement concerning regulation of products derived from new plant varieties, including those genetically engineered, was published in the **Federal Register** on May 29, 1992, and appears at 57 FR 22984–23005. Under this policy, FDA ensures that human food and animal feed, including those derived from bioengineered sources, are safe and wholesome. The University of Florida has submitted a food and feed safety and nutritional assessment summary to FDA for X17–2 papaya in 2007 that is currently under agency review.

A draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for X17–2 papaya. The draft EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the draft EA prepared to examine any environmental impacts of the proposed determination for the deregulation of the subject papaya event. The petition, the draft EA, and any comments received are available for public review, and copies of the petitions and the draft EA are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. After reviewing and evaluating the comments on the petition and the EA and other data and information, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of UFL–IFAS PRSV-resistant papaya event X17–2 and the availability of APHIS' written regulatory and environmental decision.

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 26th day of August 2008.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E8–20289 Filed 8–29–08; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Designation for the Aberdeen, (SD), Decatur (IL), Hastings (NE), Fulton (IL), Missouri, and South Carolina Areas

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** We are announcing designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (USGSA): Aberdeen Grain Inspection, Inc. (Aberdeen); Decatur Grain Inspection, Inc. (Decatur); Hastings Grain Inspection, Inc. (Hastings); John R. McCrea Agency, Inc. (McCrea); Missouri Department of Agriculture (Missouri); and South Carolina Department of Agriculture (South Carolina).

**DATES:** Effective October 1, 2008.

**ADDRESSES:** USDA, GIPSA, Karen Guagliardo, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

**FOR FURTHER INFORMATION CONTACT:** Karen Guagliardo at 202–720–7312, e-mail *Karen.W.Guagliardo@usda.gov*.

*Read Applications:* All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

**SUPPLEMENTARY INFORMATION:** In the March 3, 2008, **Federal Register** (73 FR 11387), we requested applications for designation to provide official services in the geographic areas assigned to the official agencies named above. Applications were due by April 2, 2008.

Aberdeen, Decatur, Hastings, McCrea, Missouri, and South Carolina were the sole applicants for designation to provide official services in the entire area currently assigned to them, so

GIPSA did not ask for additional comments on them.

We evaluated all available information regarding the designation criteria in section 7(f)(l) of USGSA (7 U.S.C. 79 (f)) and determined that Aberdeen, Decatur, Hastings, McCrea, Missouri, and South Carolina are able to provide official services in the geographic areas specified in the March 3, 2008, **Federal Register**, for which they applied. These designation actions to provide official services are effective October 1, 2008, and terminate September 30, 2011, for Aberdeen, Decatur, Hastings, McCrea, Missouri, and South Carolina. Interested persons may obtain official services by calling the telephone numbers listed below.

| Official agency | Headquarters location and telephone | Designation start–end |
|---|---|---|
| Aberdeen | Aberdeen, SD, 605–225–8432; Additional Location: Mitchell, SD | 10/1/2008–9/30/2011. |
| Decatur | Decatur, IL, 217–429–2466 | 10/1/2008–9/30/2011. |
| Hastings | Hastings, NE, 402–462–4254; Additional Location: Grand Island, NE | 10/1/2008–9/30/2011. |
| McCrea | Fulton, IL, 815–589–9955 | 10/1/2008–9/30/2011. |
| Missouri | Jefferson City, MO, 573–751–5515; Additional Locations: Vandalia, Kansas City, St. Joseph, Marshall and New Madrid, MO. | 10/1/2008–9/30/2011. |
| South Carolina | Columbia, SC, 843–296–7522 | 10/1/2008–9/30/2011. |

Section 7(f)(1) of the USGSA, authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)(1)).

Section 7(g)(1) of USGSA provides that designations of official agencies will terminate not later than three years and may be renewed according to the criteria and procedures prescribed in section 7(f) of USGSA.

**Authority:** 7 U.S.C. 71–87k.

**James E. Link,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. E8–19539 Filed 8–29–08; 8:45 am]

**BILLING CODE 3410–KD–P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Opportunity for Designation in Jamestown (ND), Lincoln (NE), Memphis (TN), and Sioux City (IA) Areas, and Request for Comments on the Official Agencies Serving These Areas

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** The designations of the official agencies listed below will end on March 31, 2009. We are asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. We are also asking for comments on the quality of services provided by these currently designated agencies: Grain Inspection, Inc. (Jamestown); Lincoln Inspection Service, Inc. (Lincoln); Midsouth Grain Inspection Service (Midsouth); and Sioux City Inspection and Weighing Service Company (Sioux City).

**DATES:** Applications and comments must be received on or before October 2, 2008.

**ADDRESSES:** We invite you to submit applications and comments on this notice. You may submit applications and comments by any of the following methods:

- *To apply for designation, go to FGIS online, Web page: https://fgis.gipsa.usda.gov/default_home_FGIS.aspx.* Select *Delegations/Designations and Export Registrations (DDR).* You need e-authentication and a customer number prior to applying.
- *Hand Delivery or Courier:* Deliver to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- *Fax:* Send by facsimile transmission to (202) 690–2755, attention: Karen Guagliardo.
- *E-mail:* Send via electronic mail to *Karen.W.Guagliardo@usda.gov.*
- *Mail:* Send hardcopy to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments and reading any comments posted online.

*Read Applications and Comments:* All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Karen Guagliardo at 202–720–7312, e-mail *Karen.W.Guagliardo@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Section 7(f)(1) of the United States Grain Standards Act, as amended (USGSA or Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)(1)).

Section 7(g)(1) of USGSA provides that designations of official agencies will terminate not later than three years and may be renewed according to the criteria and procedures prescribed in section 7(f) of USGSA.

CURRENT DESIGNATIONS BEING ANNOUNCED FOR RENEWAL

| Official agency | Main office | Designation start | Designation end |
|---|---|---|---|
| Jamestown | Jamestown, ND | 4/01/2009 | 3/31/2012 |
| Lincoln | Lincoln, NE | 4/01/2009 | 3/31/2012 |
| Midsouth | Memphis, TN | 4/01/2009 | 3/31/2012 |
| Sioux City | Sioux City, IA | 4/01/2009 | 3/31/2012 |

**Jamestown**

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Minnesota and North Dakota, is assigned to Jamestown.

In Minnesota

Traverse, Grant, Douglas, Todd, Morrison, Mille Lacs, Kanabec, Pine, Big Stone, Stevens, Pope, Stearns, Benton, Isanti, Chisago, Swift, Kandiyohi, Meeker, Wright, Sherburne, Anoka, Lac Qui Parle, and Chippewa Counties.

In North Dakota

Bounded on the North by Interstate 94 east to U.S. Route 85; U.S. Route 85 north to State Route 200; State Route 200 east to U.S. Route 83; U.S. Route 83 southeast to State Route 41; State Route 41 north to State Route 200; State Route 200 east to State Route 3; State Route 3 north to the northern Wells County line, the northern Wells and Eddy County lines east; the eastern Eddy County line south to the northern Griggs County line; the northern Griggs county line east to State Route 32;

Bounded on the East by State Route 32 south to State Route 45; State Route 45 south to State Route 200; State Route 200 west to State Route 1; State Route 1 south to the Soo Railroad line; the Soo Railroad line southeast to Interstate 94; Interstate 94 west to State Route 1; State Route 1 south to the Dickey County line;

Bounded on the South by the southern Dickey County line west to U.S. Route 281; U.S. Route 281 north to the Lamoure County line; the southern Lamoure County line; the southern Logan County line west to State Route 13; State Route 13 west to U.S. Route 83; U.S. Route 83 south to the Emmons County line; the southern Emmons County line; the southern Sioux County line west State Route 49; State Route 49 north to State Route 21; State Route 21 west to the Burlington-Northern line; the Burlington-Northern line northwest to State Route 22; State Route 22 south to U.S. Route 12; U.S. Route 12 west-northwest to the North Dakota State line; and

Bounded on the West by the western North Dakota State line north to Interstate 94.

Jamestown's assigned geographic area does not include the following grain elevators inside Jamestown's area which have been and will continue to be serviced by the following official agency: Minot Grain Inspection, Inc.; Benson Quinn Company, Underwood; and Falkirk Farmers Elevator, Washburn, both in McLean County; and Harvey Farmers Elevator, Harvey, Wells County.

**Lincoln**

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Iowa and Nebraska, is assigned to Lincoln.

Bounded on the North (in Nebraska) by the northern York, Seward, and Lancaster County lines; the northern Cass County line east to the Missouri River; the Missouri River south to U.S. Route 34; (in Iowa) U.S. Route 34 east to Interstate 29;

Bounded on the East by Interstate 29 south to the Fremont County line; the northern Fremont and Page County lines; the eastern Page County line south to the Iowa-Missouri State line; the Iowa-Missouri State line west to the Missouri River; the Missouri River south-southeast to the Nebraska-Kansas State line;

Bounded on the South by the Nebraska-Kansas State line west to County Road 1 mile west of U.S. Route 81; and

Bounded on the West (in Nebraska) by County Road 1 mile west of U.S. Route 81 north to State Highway 8; State Highway 8 east to U.S. Route 81; U.S. Route 81 north to the Thayer County line; the northern Thayer County line east; the western Saline County line; the southern and western York County lines.

Lincoln's assigned geographic area does not include the following grain elevators inside Lincoln's area which have been and will continue to be serviced by the following official agency: Omaha Grain Inspection Service, Inc.; Goode Seed & Grain, McPaul, Fremont County, Iowa; and Haveman Grain, Murray, Cass County, Nebraska.

**Sioux City**

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Iowa, Minnesota, Nebraska, and South Dakota, is assigned to Sioux City.

In Iowa

Bounded on the North by the northern Iowa State line from the Big Sioux River east to U.S. Route 59; U.S. Route 59 south to B24; B24 east to the eastern O'Brien County line; the O'Brien County line south; the northern Buena Vista County line east to U.S. Route 71; U.S. Route 71 north to the northern Iowa State line east to U. S. Route 169;

Bounded on the East by U.S. Route 169 south to State Route 9; State Route 9 west to U.S. Route 169; U.S. Route 169 south to the northern Humboldt County line; the Humboldt County line east to State Route 17; State Route 17 south to C54; C54 east to U.S. Route 69; U.S. Route 69 south to the northern Hamilton County line; the Hamilton County line west to R38; R38 south to U.S. Route 20; U.S. Route 20 west to the eastern and southern Webster County lines to U.S. Route 169; U.S. Route 169 south to E18; E18 west to the eastern Greene County line; the Greene County line south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to E53; E53 west to N44; N44 north to U.S. Route 30; U.S. Route 30 west to U.S. Route 71; U.S. Route 71 north to the southern Sac and Ida County lines; the eastern Monona County line south to State Route 37; State Route 37 west to State Route 175; State Route 175 west to the Missouri River; and

Bounded on the West by the Missouri River north to the Big Sioux River; the Big Sioux River north to the northern Iowa State line.

In Minnesota

Yellow Medicine, Renville, Lincoln, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, Jackson, and Martin Counties.

In Nebraska

Cedar, Dakota, Dixon, Pierce (north of U.S. Route 20), and Thurston Counties.

In South Dakota

Bounded on the North by State Route 44 (U.S. 18) east to State Route 11; State Route 11 south to A54B; A54B east to the Big Sioux River;

Bounded on the East by the Big Sioux River; and

Bounded on the South and West by the Missouri River.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: West Central Coop, Boxholm, Boone County (located inside Central Iowa Grain Inspection Service, Inc.'s, area); and West Bend Elevator Co., Algona, Kossuth County; Stateline Coop., Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and North Central Coop, Holmes, Wright County (located inside D. R. Schaal Agency's area).

**Opportunity for Designation**

Interested persons, including Jamestown, Lincoln, Midsouth, and Sioux City, may apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of USGSA (7 U.S.C. 79(f)(2)), and 7 CFR 800.196(d) regulations. Designation in the specified geographic areas is for the period beginning April 1, 2009, and ending

March 31, 2012. To apply for designation, contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *http://www.gipsa.usda.gov.*

**Request for Comments**

We are also publishing this notice to provide interested persons the opportunity to present comments on the quality of services provided by the Jamestown, Lincoln, Midsouth, and Sioux City official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data for support or objection to the designation of the applicants. Submit all comments to the Compliance Division at the above address or at *http://www.regulations.gov.*

In determining which applicant will be designated, we will consider applications, comments, and other available information.

**Authority:** 7 U.S.C. 71–87k.

**James E. Link,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. E8–19538 Filed 8–29–08; 8:45 am]

**BILLING CODE 3410–KD–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**[Docket No. 0808251149–81159–01]**

### Foreign Availability Assessment: Uncooled Thermal Imaging Cameras Incorporating Microbolometer Focal Plane Arrays

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

**ACTION:** Notice of Initiation of a Foreign Availability Assessment and Request for Comments.

**SUMMARY:** This notice is to announce that the Bureau of Industry and Security (BIS) is initiating a foreign availability assessment pursuant to sections 5(f) and 5(h) of the Export Administration Act of 1979, as amended (EAA). The Office of Technology Evaluation (OTE) will oversee the assessment of the foreign availability in China of uncooled thermal imaging cameras incorporating microbolometer focal plane arrays. BIS is also seeking public comments on the foreign availability of these cameras in China.

**DATES:** Comments must be received by September 17, 2008.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail: rhajen@bis.doc.gov.* Include the phrase ''Microbolometer FA Study'' in the subject line;
- *Fax:* (202) 482–5361.
- *Mail or Hand Delivery/Courier:* Ryan Hajen, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Room 1093, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Kevin Kurland, Office of Technology Evaluation, Department of Commerce, Washington, DC 20230, Telephone: (202) 482–2385; e-mail: *kkurland@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 5(f) and 5(h) of the Export Administration Act of 1979, as amended (EAA), authorizes the Secretary of Commerce to conduct foreign availability assessments to examine and reevaluate the effectiveness of U.S. dual-use export controls on certain items that are controlled for national security reasons under the Export Administration Regulations (EAR). The Bureau of Industry and Security (BIS) has been delegated the responsibility of conducting these assessments and compiling a final report for the Secretary's review and consideration when issuing a final foreign availability determination. Part 768 of the EAR sets forth the procedures related to foreign availability assessments. BIS is publishing this notice to announce the initiation of an assessment and to request public comments on certain aspects of the item under review.

**Foreign Availability Assessment**

On behalf of the Secretary, BIS has initiated an assessment in response to a certified foreign availability petition received from the Sensors and Instrumentation Technical Advisory Committee (SITAC). The SITAC petition asserts the foreign availability of uncooled thermal imaging cameras in China. These cameras incorporate microbolometer focal plane arrays operating in a spectral band between 8 and 14 microns, with a frame rate no higher than 60 Hz, and a pixel count of 110,592 or less. These items are currently controlled for national security reasons under Export Control Commodity Classification Number (ECCN) 6A003.b.4.b on the Commerce Control List (Supplement No. 1 to Part 774 of the EAR). The SITAC petition asserts that cameras of comparable quality to those subject to control under 6A003.b.4.b are available-in-fact from China in sufficient quantities to render the U.S. export control of the cameras ineffective.

BIS has reviewed the SITAC petition and determined that it has sufficient evidence to show that foreign availability of these cameras exists. Therefore, BIS is initiating a foreign availability assessment of uncooled thermal imaging cameras incorporating microbolometer focal plane arrays. Upon completion of the assessment, BIS will submit its findings to the Secretary of Commerce, who in turn will issue a final determination for the Department. The final determination will be published in the **Federal Register**.

**Request for Comments**

To assist in assessing the foreign availability of these cameras, BIS is seeking public comments and submissions that relate to the following information:

- Product names and model designations of cameras that are made in China and that are comparable to the U.S. cameras with a spectral band between 8 and 14 microns, a frame rate of no more than 60 Hz, and a pixel count of 110,592 or less (U.S. cameras);
- Names and locations of Chinese companies that produce and export indigenously-produced cameras comparable to U.S. cameras;
- Chinese production quantities, sales, and/or exports of cameras comparable to U.S. cameras;
- Data on imports of Chinese cameras comparable to U.S. cameras, and/or testing and analysis of such cameras;
- An estimate of the economic impact on U.S. companies of the export controls on the U.S. cameras.

Any tangible evidence to support the above information would also be useful to BIS in its conduct of this assessment. Examples of other useful evidence are found in Supplement No. 1 to Part 768 of the EAR.

**Submission of Comments**

All comments must be submitted to the address indicated in this notice. The Department of Commerce requires that all comments be submitted in written form.

BIS encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on September 17, 2008. BIS will consider all comments received before the close of the comment period. Comments received after the close of the comment period will be considered if possible, but their consideration cannot be assured.

BIS will accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature. The information for which confidential treatment is requested must be submitted to BIS separately from non-confidential information. Each page containing company confidential information must be marked ''Confidential Information.'' Please be careful to mark only that information that is legitimately company confidential, trade secret, proprietary, or financial information with the ''confidential information'' designation. If submitted information fails to meet the standards for confidential treatment, BIS will immediately return the information to the submitter.

Information submitted in response to this notice, and not deemed confidential, will be a matter of public record and will be available for public inspection and copying. The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration, at (202) 482–1093, for assistance.

Dated: August 26, 2008.

**Christopher Wall,**

*Assistant Secretary for Export Administration.*

[FR Doc. E8–20168 Filed 8–29–08; 8:45 am]

BILLING CODE 3510–JT–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Upcoming Sunset Reviews.

**SUPPLEMENTARY INFORMATION:**

**Background**

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

**Upcoming Sunset Reviews for October 2008**

The following Sunset Review is scheduled for initiation in October 2008 and will appear in that month's Notice of Initiation of Five-year Sunset Reviews.

| Antidumping Duty Proceedings | Department Contact |
|---|---|
| Refined Brown Aluminum Oxide from the PRC (A–570–882) | Brandon Farlander (202) 482–0182 |
| **Countervailing Duty Proceedings**. | |
| No Sunset Review of countervailing duty orders are scheduled for initiation in October 2008.. | |
| **Suspended Investigations**. | |
| No Sunset Review of suspended investigations are scheduled for initiation in October 2008.. | |

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3--Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) . The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 20, 2008.

**Edward C. Yang,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8–20292 Filed 8–29–08; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

**Background**

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

**Respondent Selection**

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and

Border Protection (CBP) data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the initiation **Federal Register** notice.

*Opportunity To Request a Review:* Not later than the last day of September 2008,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

| | Period |
|---|---|
| **Antidumping Duty Proceedings** | |
| Belarus: Steel Concrete Reinforcing Bars, A–822–804 | 9/1/07–8/31/08 |
| India: Certain Lined Paper Products, A–533–843 | 9/1/07–8/31/08 |
| Indonesia: Certain Lined Paper Products, A–560–818 | 9/1/07–8/31/08 |
| Indonesia: Steel Concrete Reinforcing Bars, A–560–811 | 9/1/07–8/31/08 |
| Italy: Stainless Steel Wire Rod, A–475–820 | 9/1/07–8/31/08 |
| Japan: Stainless Steel Wire Rod, A–588–843 | 9/1/07–8/31/08 |
| Latvia: Steel Concrete Reinforcing Bars, A–449–804 | 9/1/07–8/31/08 |
| Moldova: Steel Concrete Reinforcing Bars, A–841–804 | 9/1/07–8/31/08 |
| Poland: Steel Concrete Reinforcing Bars, A–455–803 | 9/1/07–8/31/08 |
| Republic of Korea: Stainless Steel Wire Rod, A–580–829 | 9/1/07–8/31/08 |
| Spain: Stainless Steel Wire Rod, A–469–807 | 9/1/07–8/31/08 |
| Taiwan: Stainless Steel Wire Rod, A–583–828 | 9/1/07–8/31/08 |
| The People's Republic of China: Foundry Coke, A–570–862 | 9/1/07–8/31/08 |
| The People's Republic of China: Freshwater Crawfish Tail Meat, A–570–848 | 9/1/07–8/31/08 |
| The People's Republic of China: Greige Polyester/Cotton Printcloth, A–570–101 | 9/1/07–8/31/08 |
| The People's Republic of China: Certain Lined Paper Products, A–570–901 | 9/1/07–8/31/08 |
| The People's Republic of China: Steel Concrete Reinforcing Bars, A–570–860 | 9/1/07–8/31/08 |
| Ukraine: Silicomanganese, A–823–805 | 9/1/07–8/31/08 |
| Ukraine: Solid Agricultural Grade Ammonium Nitrate, A–823–810 | 9/1/07–8/31/08 |
| Ukraine: Steel Concrete Reinforcing Bars, A–823–809 | 9/1/07–8/31/08 |
| **Countervailing Duty Proceedings** | |
| Brazil: Hot-Rolled Carbon Steel Flat Products, C–351–829 | 1/1/07–12/31/07 |
| India: Certain Lined Paper Products, C–533–844 | 1/1/07–12/31/07 |
| Indonesia: Certain Lined Paper Products, C–560–819 | 1/1/07–12/31/07 |
| **Suspension Agreements** | |
| Argentina: Lemon Juice, A–357–818 | 9/10/07–8/31/08 |
| Mexico: Lemon Juice, A–201–835 | 9/10/07–8/31/08 |

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention:

[1] Or the next business day, if the deadline falls on a weekend, Federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of September 2008. If the Department does not receive, by the last day of September 2008, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 20, 2008.

**Edward C. Yang,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8–20290 Filed 8–29–08; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–833]**

### Polyester Staple Fiber from Taiwan: Notice of Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On July 1, 2008, in response to requests from the petitioners, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on polyester staple fiber from Taiwan. The period of review is May 1, 2007, through April 30, 2008. The Department of Commerce is rescinding this review in part.

**EFFECTIVE DATE:** September 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Thomas Schauer or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0410 or (202) 482–4477.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 1, 2008, in response to requests from Wellman, Inc., and Invista, S.a.r.L. (the petitioners), the Department of Commerce (Department) published a notice of initiation of administrative review of the antidumping duty order on polyester staple fiber from Taiwan. See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 37409 (July 1, 2008). On July 23, 2008, the petitioners withdrew their request for an administrative review of Nan Ya Plastics Corporation. See letter from the petitioners dated July 23, 2008.

#### Rescission of Review in Part

In accordance with 19 CFR 351.213(d)(1) the Department will rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' We received the above withdrawal letter within the 90-day time limit. Because the Department received no other requests for review of Nan Ya Plastics Corporation, the Department is rescinding the review in part with respect to polyester staple fiber from Taiwan from Nan Ya Plastics Corporation. This rescission is pursuant to 19 CFR 351.213(d)(1). The Department will issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

#### Notification to Importers

This notice serves as a final 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 assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

We are issuing and publishing this rescission in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 25, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8–20305 Filed 8–29–08; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

### National Renewable Energy Laboratory, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 08–022. Applicant: National Renewable Energy Laboratory, Golden, CO 80401. Instrument: Electron Microscope, Model Quanta 600 FEG. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 73 FR 44968, August 1, 2008.

*Docket Number:* 08–025. Applicant: Oklahoma State University, Stillwater, OK 74078–3011. Instrument: Electron Microscope, Model Quanta 600 FEG. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 73 FR 44968, August 1, 2008.

*Docket Number:* 08–028. Applicant: National Renewable Energy Laboratory, Golden, CO 80401. Instrument: Electron Microscope, Model NOVA 630 NanoSEM. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 73 FR 44968, August 1, 2008.

*Docket Number:* 08–031. Applicant: University of Rochester Medical Center, Rochester, NY 14642. Instrument: Electron Microscope, Model Hitachi H–7650. Manufacturer: Hitachi High-Technologies Corp., Japan. Intended Use: See notice at 73 FR 44968, August 1, 2008.

*Docket Number:* 08–035. Applicant: Washington State University, Pullman, WA 99164–1020. Instrument: Electron Microscope, Model FEI Quanta 200. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 73 FR 44968, August 1, 2008.

*Docket Number:* 08–037. Applicant: Duke University, Durham, NC 27710. Instrument: Electron Microscope, Model JEM–1400. Manufacturer: JEOL, Ltd.,

Japan. Intended Use: See notice at 73 FR 44968, August 1, 2008.

*Comments:* None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: August 27, 2008.

**Faye Robinson,**

*Director, Statutory Import Programs Staff, Import Administration.*

[FR Doc. E8–20307 Filed 8–29–08; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Five-year (''Sunset'') Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty order listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of Institution of Five-year Review which covers the same order.

**EFFECTIVE DATE:** September 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** The Department official identified in the Initiation of Review section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 -*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

### Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty order:

| DOC Case No. | ITC Case No. | Country | Product | Department Contact |
|---|---|---|---|---|
| A–570–880 | 731–TA–1020 | PRC | Barium Carbonate | Juanita Chen (202) 482–1904 |

### Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's sunset Internet Web site at the following address: ''http://ia.ita.doc.gov/sunset/.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

### Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: August 20, 2008.

**Edward C. Yang,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8–20306 Filed 8–29–08; 8:45 am]

**Billing Code: 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

**[Docket No.: 080506635–8697–01]**

### Announcing Approval of the Withdrawal of Ten Federal Information Processing Standards (FIPS)

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Secretary of Commerce has approved the withdrawal of ten Federal Information Processing Standards (FIPS).

These FIPS are being withdrawn because they are obsolete, or have not been updated to adopt current voluntary industry standards, federal specifications, federal data standards, or current good practices for information security. Some of these FIPS adopt voluntary industry standards. Federal agencies and departments are directed by the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) to use technical standards that are developed in voluntary consensus standards bodies. Consequently, FIPS that duplicate voluntary industry standards are no longer needed.

Some of these FIPS adopt data standards that are developed and used by other Federal government agencies. These FIPS have not been updated to reflect changes and modifications that have been made to the data standards. The remaining FIPS adopt obsolete Federal specifications for information access and for information security. More recent advisory guidance has been issued concerning access to publicly available government information and computer data authentication. Federal agencies are responsible for using current voluntary industry standards and current federal specifications and data standards in their acquisition and management activities.

**DATES:** This withdrawal is effective September 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Shirley M. Radack, (301) 975–2833, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930, e-mail: *shirley.radack@nist.gov*.

**SUPPLEMENTARY INFORMATION:** A notice was published in the **Federal Register** (70 FR 40984–85) on July 15, 2005, announcing the proposed withdrawal of the ten Federal Information Processing Standards (FIPS). The **Federal Register** notice solicited comments on the proposed withdrawal of the FIPS from the public, research communities, manufacturers, voluntary standards organizations, and Federal, State, and local government organizations. In addition to being published in the **Federal Register**, the notice was posted on the NIST Web pages. Information was provided about the submission of electronic comments.

Comments were received from one federal government organization. No comments were received from industry organizations or individuals.

Following is a summary of the comments received.

Comments were received from the Department of Energy (DOE) Office of Scientific and Technical Information. The DOE comments supported the withdrawal of FIPS 192, Application Profile for the Government Information Locator Service (GILS), and FIPS 192–1 (a)&(b), Application Profile for the Government Information Locator Service (GILS). DOE agreed that the withdrawal of these standards was appropriate since technology advances have made the standards obsolete.

DOE stated that the GILS standard was created in 1994 to provide a mechanism for users to identify, locate, and access or acquire publicly available federal information resources. However, in the years since GILS was issued, advances in technology have made the standard obsolete. Today there are many tools available for finding information on the Internet, including Google, FirstGov, Meta Search Engines, and the Open Archives Initiative. These newer techniques enable agencies to avoid the ongoing, resource intensive cataloging efforts mandated by the GILS.

No comments were received concerning the other standards that had been proposed for withdrawal.

The FIPS number, title, and technical specifications for each of the ten FIPS being withdrawn are:

FIPS 4–2, Representation of Calendar Date to Facilitate Interchange of Data Among Information Systems; adopts American National Standard ANSI X3.30–1997: Representation of Date for Information Interchange (revision of ANSI X3.30–1985 (R1991)).

FIPS 5–2, Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States, and Associated Areas.

FIPS 6–4, Counties and Equivalent Entities of the U.S., Its Possessions, and Associated Areas.

FIPS 10–4, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions.

FIPS 113, Computer Data Authentication.

FIPS 161–2, Electronic Data Interchange (EDI) (adopts families of EDI standards known as X12, UN/EDIFACT and HL7).

FIPS 183, Integration Definition for Function Modeling (IDEF0).

FIPS 184, Integration Definition for Information Modeling (IDEFIX).

FIPS 192, Application Profile for the Government Information Locator Service (GILS).

FIPS 192–1 (a)&(b), Application Profile for the Government Information Locator Service (GILS).

Once the FIPS are withdrawn, information on them may be found at: *http://www.itl.nist.gov/fipspubs/withdraw.htm*. Withdrawal means that these FIPS will no longer be part of a subscription service that is provided by the National Technical Information Service. NIST will continue to provide relevant information on standards and guidelines by means of electronic dissemination methods.

Current versions of the data standards and specifications are available through the Web pages of the Federal agencies that develop and maintain the data codes. NIST will keep references to these withdrawn FIPS on its FIPS Web pages, and will link to current versions of these standards and specifications where appropriate.

**Authority:** Federal Information Processing Standards (FIPS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 (Pub. L. 104–106), the Federal Information Security Management Act (FISMA) of 2002 (Pub. L. 107–347), and Appendix III to Office of Management and Budget Circular A–130.

E.O. 12866: This notice has been determined to be not significant for the purposes of E.O. 12866.

Dated: August 22, 2008.

**James M. Turner,**

*Deputy Director.*

[FR Doc. E8–20138 Filed 8–29–08; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XK07**

### U.S. Climate Change Science Program Synthesis and Assessment Product Draft Report 4.2 ''Thresholds of Change in Ecosystems''

**AGENCY:** National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Notice of availability and request for public comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration publishes this notice to announce a 45-day public comment period for the draft report titled, U.S. Climate Change Science Program Synthesis and Assessment Product 4.2''Thresholds of Change in Ecosystems.''

This draft report is being released solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by NOAA. It does not represent and should not be construed to represent any Agency policy or determination. After consideration of comments received on the draft report, a revised version along with the comments received will be published on the CCSP web site.

**DATES:** Comments must be received by October 17, 2008.

**ADDRESSES:** The draft Synthesis and Assessment Product: 4.2 is posted on the CCSP Web site at: *http://www.climatescience.gov/Library/sap/sap4–2/default.php*

Detailed instructions for making comments on this draft report are provided on the CCSP web site. Comments must be prepared in accordance to these instructions and must be submitted to: *4.2–threshold@climatescience.gov*

**FOR FURTHER INFORMATION CONTACT:** Dr. Fabien Laurier, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419–3481.

**SUPPLEMENTARY INFORMATION:** The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that promote climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues.

Dated: August 25, 2008.

**William J. Brennan,**

*Assistant Secretary of Commerce for Oceans and Atmosphere, and Director, Climate Change Science Program.*

[FR Doc. E8–20275 Filed 8–29–08; 8:45 am]

**BILLING CODE 3510–12–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XH04**

### Incidental Takes of Marine Mammals During Specified Activities; Rat Population Eradication at Rat Island, AK

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

**ACTION:** Notice; issuance of an incidental take authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Fish and Wildlife Service (USFWS) for the take of marine mammals, by Level B harassment only, incidental to the eradication of non-native rat populations at Rat Island, AK.

**DATES:** The IHA is effective from September 1, 2008 through December 31, 2008.

**ADDRESSES:** A copy of the IHA and the application are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Howard Goldstein or Ken Hollingshead, NMFS, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (I) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

#### Summary of Request

On February 29, 2008, NMFS received a letter from the USFWS, requesting an IHA. The proposed 2008 IHA was published, and comments solicited on June 18, 2008 (73 FR 34705). The final IHA would authorize the take, by harassment only, of small numbers of Steller sea lions (*Eumetopias jubatus*), and Pacific harbor seals (*Phoca vitulina richardsi*), incidental to non-native rat

population eradication via bait application operations. Operations will be conducted by a field crew of USFWS personnel on foot, by watercraft (boat), and by aircraft (helicopter).

Additional information on the eradication operations is contained in the application and Environmental Assessment (EA), which is available upon request (see **ADDRESSES**).

In their application, the USFWS explains that restoration of natural ecosystem function on Rat Island promises to re-establish native seabirds and other native species, thus returning this wilderness island to a healthy natural community. This restoration cannot occur until the island is cleared of the invasive non-native Norway rats that now dominate the living community. Introduced non-native species are a leading cause of extinctions in island communities worldwide. Increasingly, land managers are removing introduced species to aid in the restoration of native ecosystems. Rats are responsible for 40–60 percent of all recorded bird and reptile extinctions worldwide. Given their widespread successful colonization on islands and the resulting impact to native species, introduced rats are identified as key species for eradication.

Most of the Aleutian Islands lying within the Alaska Maritime National Wildlife Refuge (AMNWR) provide important breeding habitat for seabirds, including many for which the Aleutians provide a substantial portion of their worldwide range. Norway rats are established on at least 10 Aleutian islands or island groups, and the diversity and numbers of breeding seabirds occurring on those islands are now conspicuously low. Rat-caused modifications to other components of the island ecosystems (e.g., other birds, plants, and invertebrates) are also evident.

The restoration of Aleutian ecosystems through introduced predator eradications has long been identified as a priority for AMNWR, and the initial efforts have been directed to removing introduced Arctic foxes. The focus now has turned to rats. The intent of the proposed operations is to facilitate the restoration of the natural island ecosystem by improving habitat quality for native species.

**Dates, Duration, and Region of Activities**

Rat Island is located in the western Aleutian Islands approximately 51° 80′ North, 178° 30′ West, approximately 1,931 km (1,200 mi) west of Anchorage, Alaska. The Ayugadak Point rookery is located on an islet approximately one mile southeast of Rat Island at 51° 45.5′ North, 178° 24.5′ East.

The location and time duration of the project activities are shown in the table below. Also shown are the estimated numbers of marine mammals affected by each activity. The timeline for the Rat Island rat eradication operations is shown in Table 1. Actual dates of activity occurrence are subject to weather conditions suitable for safe and effective flying of helicopters. While 5 days (approximately 35 helicopter flight hours) will be required to complete the two aerial bait applications on the island, the operation is likely to be interrupted by weather unsuitable for flying. Therefore, a maximum of 45 days will be allotted to achieve the 5 day operations window. The dates for bait application and demobilization will be weather dependent.

TABLE 1. TIMELINE FOR THE RAT POPULATION ERADICATION AT RAT ISLAND, AMNWR.

| Location | Rat Island | | | Islet near Ayugadak Pt. |
|---|---|---|---|---|
| Project activity | staging | bait application | demobilization | bait application |
| Time duration<br>Type of disturbance<br># of takes (Steller sea lions/ harbor seals) | 2 days<br>helicopter<br>0/25 | 5 days<br>helicopter<br>130/200 | 2 days<br>helicopter<br>0/25 | 15 minutes<br>helicopter<br>320/0 |

**Description of the Specified Activity (Rat Eradication)**

Rats were first introduced to Alaska over 200 years ago at Rat Island in the western Aleutian Island archipelago. Prior to this introduction, the island likely supported significant populations of breeding seabirds and other ground nesting birds which evolved in the absence of mammalian predators. Since their introduction, rats and foxes have extirpated breeding seabirds and had detrimental impacts on vegetation and intertidal life on the island. AMNWR personnel eradicated foxes on Rat Island in 1984. Working with others, the USFWS proposes to eradicate rats from the island using removal techniques based on successful island rat eradications elsewhere in the U.S. and globally.

The purpose of eradicating rats from Rat Island is to conserve, protect and enhance habitat for native wildlife species, especially nesting habitat for seabirds, and to restore the biotic integrity of the island. The overarching goal in a successful eradication is to ensure the delivery of a lethal dose of toxicant to every rodent on the island. The primary method for eradicating rats from Rat Island is delivery of compressed-grain bait pellets containing rodenticide to every rat territory on the island through aerial broadcast. The bait pellets will contain 25 ppm brodifacoum and will be applied according to Environmental Protection Agency (EPA) approved label directions.

The need for caution near the marine and freshwater environments requires a buffer when broadcasting the rodenticide. As a result, some areas may not receive the optimal bait coverage with helicopter broadcast. In cases where it is evident or suspected that any land area on Rat Island or offshore islets did not receive full coverage, there will be supplemental systematic hand broadcast either by foot, boat, helicopter, or any combination of the above. All bait application activities will be conducted by, or under the supervision of, a Pesticide Applicator certified by the State of Alaska.

**Staging and Preparation for Rat Eradication Operations**

Field crews will visit Rat Island in the end of summer or beginning of autumn prior to the rat eradication to install temporary infrastructure and storage sites. These will include: (1) a camp site capable of supporting 20 people for up to seven weeks; (2) three bait staging areas, where bait will be contained in up to 200 storage units at each staging area; and (3) a fuel storage site that will comply with all appropriate safety standards and regulations.

Additional material may be brought to the island at that time and staged for the fall application of bait. Helicopters will deliver most of the necessary materials to each site on the island from a vessel anchored nearby. Staging procedures in summer will be conducted using a helicopter capable of lifting a 700 kg (1,543 lbs) payload. Helicopter

operations during project staging will be localized to discrete flight paths and landing sites servicing the camp, three bait staging locations, and a fuel storage site.

It is possible that some of the material needed for eradication will not be available in the summer. In this case, that material will be staged on the island during the week prior to the fall application of bait.

**Staging and Preparation at Rat Island**

The summer staging and preparation activities for Rat Island are expected to take 5 days during September. Dates for activities at Rat Island are subject to change due to scheduling and logistics concerns. Helicopter support during this period is estimated to take two days. Wooden storage boxes and platform construction materials will be staged at three areas, as indicated in Figure 1 in USFWS' IHA application. Fuel and all other camp materials will be delivered to the Gunner's Cove field camp location. The R/V *Tiglax* will be providing vessel support for the activities.

A field camp will be installed at a site 600 m (1,968 ft) inland to Gunner's Cove. A loading zone for the staging of bait and fuel storage will be placed inland 500 m (1,640 ft) from the coast. The field camp will be 800 m (2,624 ft) from the loading zone and 600 m from the beach site. The anchorage in Gunner's Cove is 800m from the loading zone and 700 m (2,296 ft) from the beach site. The helicopter will transport cargo from ship to shore at each of the three major project zones (field camp, loading zone, and Gunner's Cove beach site).

All materials not available during the summer staging and preparation periods will be transported to Rat Island during the week of September 22–27, 2008. Helicopter support during this period is estimated to take two days.

**Demobilization**

Once eradication has been completed operational demobilization and clean-up will commence. A charter vessel will be employed to transport all crew and equipment off the island. Demobilization and clean-up will include deconstructing and removing: (1) field camp; (2) garbage and human waste; (3) staging areas; and (4) fuel. All tents, weatherports, and other field camp equipment will be disassembled, packed, and returned to the vessel by helicopter. All equipment will be removed from bait staging areas and transported off the island. The wooden storage boxes will be disassembled, bound, and transported by helicopter back to the vessel. Excess fuel will also be transported back to the vessel by helicopter. There will be no demobilization at the islet near Ayugadak Point.

Additional details regarding the rat eradication operations can be found in the Environmental Assessment (EA): ''Restoring Wildlife Habitat on Rat Island'', USFWS 2007 (EA). The EA can also be found online at: *http://alaskamaritime.fws.gov/news.htm*

**Demobilization at Rat Island**

Demobilization and clean-up activities will commence once the eradication operations are complete. The demobilization is estimated to take five days and is scheduled for the week of November 1–7. If favorable weather conditions allow the eradication operation to be completed prior to October 31st, demobilization could begin during the month of October.

**Bait Application During Specified Activities**

Bait application operations will be conducted using two single-primary-rotor/single tail-rotor helicopters. Bait will be applied from specialized bait hoppers slung 15–20 m (49–66 ft) beneath the helicopter. Helicopter operations for the bait application will necessitate low-altitude overflights of the entire land area of Rat Island and adjacent vegetated islets. The helicopter will fly at a speed ranging from 25–50 knots (46–93 km/hr or 29–58 mph) at an average altitude of approximately 50 m (164 ft) above the ground.

To make bait available to all possible rat home ranges on the island, bait will need to be applied evenly across emergent land area, with every reasonable effort made to prevent bait spread into the marine environment. The baiting regime will follow common practice in which parallel, overlapping flight swaths are flown across the interior island area and overlapping swaths with a deflector attached to the hopper (to prevent bait spread into the marine environment) flown around the coastal perimeter. Flight swaths will be defined by the uniform distance of bait broadcast from the hopper, ranging from 50–75 m (164–246 ft). Flight swaths will be flown in a parallel pattern, with subsequent flight swaths overlapping the previous by approximately 25–50% to ensure no gaps in bait coverage.

*Bait Application at Rat Island*

Bait application will commence once staging and preparation have been accomplished as planned. The application will occur during a 45–day time period from September 28–November 11, 2008. The bait application is estimated to take approximately 35 hours total flight time; however, the implementation will likely be interrupted by typical fall weather patterns in the central Aleutians, which are notoriously unsettled. Therefore, a maximum of 45 days will be allotted to achieve the 35 hour operation window.

*Bait Application of the Rookery on the Islet off Ayugadak Point*

The islet located 1.6 km (1 mi) off Ayugadak Point is a Steller sea lion rookery, designated as Critical Habitat under the Endangered Species Act (ESA). The islet is also potential rat habitat and the thick kelp beds between the main island and this islet make rat migration to and from the islet possible. Bait, via the installation of bait stations, was planned to be delivered to the islet off Ayugadak Point with an adaptive alternative-baiting strategy designed to minimize helicopter disturbance. Due to timing constraints, USFWS was not able to install the bait stations as originally planned in the proposed IHA application. During fall operations, project field crews will treat the islet as necessary by aerial broadcast in October. This would take place during the October1–November 11 time frame and require approximately 15 minutes of helicopter flight time. No other equipment will be used that requires demobilization at the islet.

**Description of Marine Mammals in Activity Area**

The marine mammals that occur in the project area belong to four taxonomic groups: odontocetes (toothed cetaceans, such as dolphins and sperm whale), mysticetes (baleen whales), pinnipeds (seals, sea lions, and walrus), and fissipeds (sea otter). Of the 18 cetacean species in the area, several are common.

Six cetacean species are listed as endangered under the ESA, including the humpback, sei, fin, blue, North Pacific right, and sperm whales. Other cetacean species that potentially could occur in the western Aleutian islands includes Cuvier's, Baird's, and Stejneger's beaked whales, beluga, killer, and short-finned pilot whales, Pacific white-sided and Risso's dolphin, and harbor and Dall's porpoises. Because the proposed activity will occur predominantly over land, however, and because of the low probability of cetaceans occurring in the immediate vicinity of the island shore and the fact that USFWS will follow established procedures to ensure that bait is not released into the marine environment, NMFS believes it is unlikely that any

cetaceans will be harassed by the proposed activity. Therefore, cetaceans will not be addressed further.

Four species of pinnipeds potentially could occur in the western Aleutian Islands, including Steller sea lions, Pacific harbor seals, northern fur seals, and ribbon seals. Numbers of Steller sea lions, harbor seals, and northern fur seals have been decreasing in the North Pacific over the last several decades (Springer *et al.*, 2003). Although causes of the declines are poorly understood, it is evident that incidental mortality attributable to commercial fisheries and intentional harvesting during the 1960s and 1970s have played a role in the initial declines, and that predation by killer whales is a contributing factor (Springer *et al.*, 2003).

The Pacific walrus, California sea lion, and ringed, spotted, bearded, and northern elephant seals likely will not be encountered in the study area, but they are known to occur in the eastern Aleutians. The northern sea otter (Enhydra lutris) and walrus are managed by the USFWS. Walrus are unlikely to be encountered in the study area and any potential take of sea otters will either by authorized by the USFWS or avoided. Few surveys have examined the distribution and abundance of marine mammals inhabiting the waters around the Aleutian Islands, although a few reports are available (e.g., Forney and Brownell, 1996; Moore, 2001; Wade *et al.*, 2003).

TABLE 2. THE HABITAT, AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE ALEUTIAN ISLANDS.

| Species | Habitat | ESA[1] |
|---|---|---|
| **Mysticetes** | | |
| North Pacific right whale (*Eubalaena japonica*) | Coastal and shelf | EN |
| Gray whale (*Eschrichtius robustus*) | Coastal, lagoons | NL |
| Humpback whale (*Megaptera novaeangliae*) | Mainly nearshore waters and banks | EN |
| Minke whale (*Balaenoptera acutorostrata*) | Shelf, coastal | NL |
| Blue whale (*Balaenoptera musculus*) | Pelagic and coastal | EN |
| Sei whale (*Balaenoptera borealis*) | Primarily offshore, pelagic | EN |
| Fin whale (*Balaenoptera physalus*) | Slop, mostly pelagic | EN |
| **Odontocetes** | | |
| Sperm whale (P*hyseter macrocephalus*) | Pelagic, deep seas | EN |
| Cuvier's beaked whale (*Ziphius cavirostris*) | Pelagic | NL |
| Baird's beaked whale (*Berardius bairdii*) | Pelagic | NL |
| Stejneger's beaked whale (*Mesoplodon stejnegeri*) | Likely pelagic | NL |
| Beluga whale (*Delphinapterus leucas*) | Coastal, ice edges | NL |
| Pacific white-sided dolphin (*Lagenorhynchus obliquidens*) | Offshore, inshore | NL |
| Risso's dolphin (*Grampus griseus*) | Offshore, inshore, >400m | NL |
| Killer whale (*Orcinus orca*) | Widely distributed | NL |
| Short-finned pilot whale (*Globicephala macrorhynchus*) | Inshore and offshore | NL |
| Harbor porpoise (*Phocoena phocoena*) | Coastal, inland waters | NL |
| Dall's porpoise (*Phocoenoides dalli*) | Slope, offshore waters | NL |
| **Pinnipeds** | | |
| Northern fur seal (*Callorhinus ursinus*) | Pelagic, breeds coastally | NL |
| California sea lion (*Zalophus californianus*) | Widely distributed | NL |
| Steller sea lion (*Eumetopias jubatus*) | Mostly pelagic, high-relief | NL |
| Pacific Walrus (*Odobenus rosmarus divergens*) | Ice | NL |
| Bearded seal (*Erignathus barbatus*) | Ice | NL |
| Pacific harbor seal (*Phoca vitulina richardsi*) | Coastal | NL |
| Spotted seal (*Phoca largha*) | Ice | NL |

TABLE 2. THE HABITAT, AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE ALEUTIAN ISLANDS.—Continued

| Species | Habitat | ESA[1] |
|---|---|---|
| Ringed seal (*Pusa hispida*) | Ice | NL |
| Ribbon seal (*Histriophoca fasciata*) | Ice | NL |
| Northern elephant seal (*Mirounga angustirorostris*) | Coastal, pelagic when migrating | NL |

[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed

Not all these species (listed in Table 3 above) are expected to be harassed from the described operations. Because most of the activities occurring on or over land and most species are considered rare in the project area, only Steller sea lions and Pacific harbor seals are expected to be disturbed by the project.

*Steller Sea Lion*

Steller sea lions range along the North Pacific Rim from northern Japan to California. They are most abundant in the Gulf of Alaska and Aleutian Islands (NMFS, 2006). Two separate stocks of Steller sea lions are recognized in U.S. waters; an eastern U.S. stock that includes animals east of Cape Suckling, Alaska (144 West), and a western U.S. stock which includes animals west of Cape Suckling. The western Distinct Population Segment (DPS) of Steller sea lions has experienced a major decline of 75% over the past 20 years (Calkins *et al.*, 1999; USFWS, 1997; NMFS, 2007). Consequently the western DPS of Steller sea lions were listed as Endangered under the ESA in 1997. The reasons for this decline are not entirely known and are currently under investigation.

Aerial survey data from 2004–2005 were used to calculate a minimum population estimate of 39,988 animals for the western U.S. waters stock. The Bering Sea/Aleutian Islands area population estimate for the same period is 20,578 (NMFS, 2006).

Steller sea lions are considered non-migratory with dispersal generally limited to juveniles and adult males. In the Aleutian Islands, Steller sea lions generally breed and give birth from late May to early July (Pitcher and Calkins, 1981), and pups remain at rookeries until about early to mid-September (Calkins *et al.*, 1999). Non-reproductive animals congregate at haul out sites.

At Rat Island, a persistent haul-out site is known at the west end of the island near Krysi Point and a rookery is known from the islet off Ayugadak Point. Both sites were active in 2007 (Buckelew *et al.*, 2007). Rat Island and the islet off Ayugadak Point, which have a haul-out and rookery, are designated critical habitat for Steller sea lions and ''no entry'' zones have been established. Critical habitat includes a terrestrial zone and air zone, that extends 3,000 ft (914 m) landward, and above each major rookery and haul-out in Alaska. For the major rookery and haul-out west of 144 W (Ayugadak Point), critical habitat includes an aquatic zone that extends 20 nm (37 km) in State and Federally managed waters from the from the baseline or basepoint of the rookery and/or haul-out.

USFWS has consulted with NMFS and NMFS determined that AMNWR did not need a permit to conduct routine refuge operations within the boundaries of the sea lion rookery closure zones and personnel conducting eradication operations in Steller sea lion habitat avoid direct confrontation. The determination relates to 50 CFR 223.202 (b)(2) which states ''Paragraph (a) of this section does not prohibit or restrict a Federal, state or local government official, or his or her designee, who is acting in the course of official duties from: (ii) Entering the buffer areas to perform activities that are necessary for national defense, or performance of other legitimate governmental activities.'' The USFWS and NMFS consider rat eradication a routine refuge operation to which 50 CFR 223.202 is applicable.

*Pacific Harbor Seal*

In the Pacific Ocean, harbor seals occur in coastal waters and estuaries from Baja California north along the west coast of the U.S. and Canada to Alaska including the Aleutian Islands, southern Bristol Bay and the Pribilof Islands. Harbor seals living in the Aleutian Islands are part of the Gulf of Alaska stock. The Gulf of Alaska stock has experienced significant declines ranging from 50–85% over the past 30 years (NMFS, 2006). Limited information suggests some modest recovery from initial declines and the stock has not been listed under the ESA. The current statewide population estimate for Alaska harbor seals is 180,017 (NMFS, 2006).

Harbor seals are generally non-migratory with some local movements related to season, weather, and food availability (NMFS, 2006). In Alaska, harbor seals typically give birth to a single pup between May and mid-July. Pups are generally weaned within one month and separate from their mother. Harbor seals in the Gulf of Alaska undergo an annual molt which peaks between the first week in August and the first week in September (Daniel *et al.*, 2003). Harbor seals are found in scattered locations along the shores of Rat Island and some offshore islets.

TABLE 3. RECENT SURVEY RESULTS FOR PINNIPEDS IN THE RAT ISLAND AREA.

| Species | Number | Year | Source | Comments |
|---|---|---|---|---|
| Harbor seal | 93 | 1999 | Small *et al.* in press | Aerial survey. |
| | ''Fairly common'' | 2007 | Buckelew *et al.* 2007 | Often seen in water, not seen hauled out |
| Steller sea lion | 45 | 2004 | NMFS database | Aerial survey for Rat Is. (adults and juveniles) |
| | 254 | 2005 | NMFS database | Aerial survey for Ayugadak Point Rookery (includes 83 pups) |
| | present | 2007 | Buckelew, 2007 | Seen from boat offshore at Rat Is. And Ayugadak Pt. |

Further information on the biology and distribution of these species and others in the region can be found in USFWS' application and EA, which is available upon request (see **ADDRESSES**), and the Marine Mammal Stock Assessment Reports, which are available online at *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/individual_sars.html*.

**Potential Effects of the Proposed Activity on the Marine Mammals**

*Effects of Rodenticide*

Pinnipeds are not expected to be impacted by the use of the rodenticide (brodifacoum) during the rat eradication operations. Brodifacoum is a vertebrate toxicant that is commonly used widely available in the United States. Most vertebrates are less susceptible to brodifacoum than are rats, and would have to consume a higher dose, relative to body mass, before reaching a toxicity threshold. The rodenticide bait pellets, which are primarily composed of grain, are not part of the natural diet of carnivorous (almost exclusively piscivorous) pinnipeds and therefore are not expected to be consumed. Also, pinnipeds are not expected to prey or scavenge on other animals that have consumed and succumb to the effects of the rodenticide as they do not feed while hauled out on land. The only possible routes for bait ingestion are accidental. The rodenticide bait will not be broadcast into the marine environment, and if it were to enter the water it will disperse and disintegrate within hours. The effects of sublethal exposure to the rodenticide is negligible and warrants little concern given the very slight risk during the length of the operations.

*Behavioral Disturbance*

It is well known that human activity can flush pinnipeds off haul-out sites (Allen *et al.*, 1984; Calambokidis *et al.*, 1991; Suryan and Harvey, 1999; Mortenson *et al.*, 2000). Researchers have observed that human disturbances in the form of boat and aircraft traffic and people on the beach can flush pinnipeds into the water from haul-out sites and impact pinnipeds haul-out numbers (Renouf *et al.*, 1981; Schneider and Payne, 1983; Terhune and Almon, 1983).

Helicopter disturbances are mainly in the forms of airborne and underwater noise generated by the engine of the aircraft and the physical presence of the aircraft (Richardson *et al.*, 1995; Born *et al.*, 1999). Noise generated from helicopter activities may cause harassment of pinnipeds, both hauled out and in the water, at or directly below the surface. Airborne sound from a low-flying helicopter may be heard by marine mammals while at the surface or underwater. In general, helicopters tend to be noisier than fixed-wing aircraft of similar size, and larger aircraft tend to be louder than those that are smaller. Underwater sounds from aircraft are strongest just below the surface and directly under the aircraft. Noise from aircraft would not be expected to cause direct physical effects, but have the potential to affect behavior. The primary factor that may influence abrupt movements of animals is engine noise, specifically changes in engine noise.

Studies on many wildlife species responses to aircraft approaches showed that flight altitude, noise output, speed, and approach pattern are the most important factors in determining an animal's reaction to an overflight (McKechnie and Gladwin, 1995).

*Steller Sea Lions*

The response of pinnipeds, like Steller sea lions, to aircraft overflights varies from no discernable reaction to completely vacating haul outs after a single overflight (Calkins, 1979; Efroymson and Suter, 2001). Approaching aircraft generally flush animals into the water. In one case, Withrow *et al.* (1985 in Richardson *et al.*, 1995) reported Steller sea lions left a beach in response to a Bell 205 helicopter ≤1.6 km away, but the noise from a helicopter is typically directed down in a ''cone'' underneath (Richardson *et al.*, 1995) so disturbance at such great distance is probably uncommon.

At Rat Island, known persistent haul out sites will be avoided during staging operations as will any other haul out sites discovered prior to helicopter operations. In spite of these precautions, sea lions encountered unexpectedly during helicopter operations could be flushed from land temporarily. An individual sea lion's exposure to peak noise from the helicopter will be limited to animals that remain ashore, and is likely to be of short duration, as the elevation and speed of the helicopter will limit the time that any single location is exposed to maximum noise.

It will be more difficult to avoid known haul sites on Rat Island with the helicopter during bait application because of the need for thorough coverage of the island and islet. No pups are expected on Rat Island. The impacts of disturbance to sea lions during molting (a sensitive period to disturbance, Richardson *et al.*, 1995) will be minimized by timing overflights after the peak molting period is over.

The installation of bait stations on the islet off Ayugadak Point in August will not occur as planned in the proposed IHA (73 FR 34705). The island will be baited with the helicopter as described in the EA, in the fall after the pupping and primary molting season. This is likely to result in flushing sea lions from the islet resulting in short-term displacement. However, as helicopter baiting will be a very short process (approximately 15 minutes), disturbance to Steller sea lions is likely to be very short-term, allowing the animals to return to land quickly.

Risks to Steller sea lions from personnel camps on Rat Island will be minimal as camps and storage sites will be located well inland away from possible Steller sea lion haul-out areas.

Overall, the effects of the operations described in the EA on Steller sea lions will vary depending on the number of disturbance events. For the purpose of estimating the potential numbers of pinnipeds taken by these proposed activities, NMFS assumes that pinnipeds that move (meaning move their whole body from one location to another, not just move their head from left to right, for example) or change the direction of their movement in response to the presence of the field crew personnel are taken by Level B Harassment. However, the short-term displacement from haul-outs that is likely to occur as a result of helicopter noise and personnel is not anticipated to have any effect on overall energy balance or fitness of any individual animals.

It is not likely that any Steller sea lions will suffer injury or the potential for injury as a result of the proposed activities. The potential disturbance associated with the project would result in Steller sea lions entering the water, which they do as part of their normal pattern of behavior. Flushing of groups of animals at pinniped haul-outs is also possible. Stampeding is not anticipated to occur with the implementation of monitoring and mitigation measures by USFWS personnel. NMFS has determined that the implementation of rat eradication activities as described in the application and the Environmental Assessment (EA) will have a negligible impact on Steller sea lions on an individual or population level.

*Pacific Harbor Seals*

The response of pinnipeds to proposed aircraft overflights varies from no discernable reaction to completely vacating haul outs after a single overflight (Calkins, 1979; Efroymson

and Suter, 2001). Approaching aircraft generally flush animals into the water.

During staging operations, project managers will plan helicopter flight lines and boat travel to minimize the potential for disturbance to harbor seal haul-outs known from existing databases and surveys conducted prior to operations. However, in spite of these precautions, seals encountered unexpectedly during helicopter operations could be flushed from land temporarily. An individual seal's exposure to peak noise from the helicopter will be limited to animals that remain ashore, and is likely to be of short duration, as the elevation and speed of the helicopter (see Description of Activities, above) will limit the time that any single location is exposed to maximum noise.

It will be more difficult to avoid known haul-out sites of Rat Island with the helicopter during proposed bait application because of the need for thorough coverage of the entire island. No young pups are expected on Rat Island during the fall. The impacts of disturbance to seals during molting (another sensitive period) will be minimized by timing overflights after the peak molting period is over.

The sporadic personnel presence and temporary infrastructure installations that may be necessary near seal haul-outs during both staging and bait application operations may result in localized disturbances, although this is much less likely to disturb animals than helicopter overflights. The camps and staging areas themselves will be well inland and will have negligible impacts on seals hauled out on the coastline.

Overall, the short-term displacement from haul-out sites that is likely to occur as a result of helicopter noise and personnel activities is anticipated to have a negligible impact on the overall energy balance or fitness of any individual animals.

It is not likely that any harbor seals will suffer injury or the potential for injury as a result of project activities. NMFS has determined that the implementation of rat eradication activities as described in the application and the EA will have a negligible impact on Pacific harbor seals on an individual or population level.

*Pinnipeds in the Rat Island Project Area*

Variable numbers of sea lions and harbor seals typically haul out near bait application sites used for eradication operations, with breeding activity occurring at one known site. Pinnipeds likely to be affected by rat eradication activity are those that are hauled-out on land at or near bait application sites.

Incidental harassment may result if hauled animals move away from the field crew personnel, watercraft, and aircraft. For the purpose of estimating the potential numbers of pinnipeds taken by these proposed activities, NMFS assumes that pinnipeds that move (meaning move their whole body from one location to another, not just move their head from left to right, for example) or change the direction of their movement in response to the presence of field crew personnel activities are taken by Level B Harassment. Although marine mammals will not be deliberately approached by field crew personnel during proposed operations, approach may be unavoidable if pinnipeds are hauled out directly upon the bait application sites. If disturbed, hauled-out animals may move toward the water without risk of encountering significant hazards. In these circumstances, the risk of injury or death to hauled animals is very low.

The risk of marine mammal injury or mortality associated with rat eradication operations increases somewhat if disturbances occur during breeding season, as it is possible that mothers and dependent pups could become separated. If separated pairs don't reunite fairly quickly, risks of mortality to pups (through starvation) may increase. Also, adult Steller sea lions may trample sea lion pups if disturbed, which could potentially result in the injury or death of pups. However, to mitigate this risk, NMFS and USFWS shall include time of year restrictions to limit the presence of field crew personnel activities to months that Steller sea lion and harbor seal dependent pups are not present at the bait application sites.

The risk of marine mammal injury mortality associated with rat eradication operations increases somewhat if disturbances occur in steep areas with precipitous cliffs where pinnipeds haul-out. However, there are no steep or precipitous areas that animals would be flushed from during the operations. The beach at Krysi Point on Rat Island consists of mixed small boulders and cobble. The terrain behind the beach gradually sloped upward 38 m (125 ft). There are offshore rocks which the animals also use at that persistent haul-out location. The islet near Ayugadak Point has boulder beaches that are backed by steep grass covered slopes. The animals at the rookery only use the beach areas and do not access the steep areas. Field crew personnel are to use great care approaching sites with pinnipeds and will leave as soon as possible to minimize effects. Because of the circumstances and the proposed IHA requirements discussed above, NMFS believes it highly unlikely that the activities would result in the injury or mortality of pinnipeds.

For the purposes of estimating take in the IHA, NMFS assumes that pinnipeds that move (meaning move their whole body from one location to another, not just move their head from left to right, for example) or change the direction of their movement in response to the presence of field crew personnel activities are taken by Level B Harassment. As discussed further in the Monitoring and Reporting section below, the responses of the pinnipeds will be recorded by USFWS personnel during the specified activities.

**Comments and Responses**

On June 18, 2008 (73 FR 34705), NMFS published in the **Federal Register** a notice of a proposed IHA for USFWS' request to take marine mammals incidental to conducting non-native rat eradication operations at Rat Island, and requested comments regarding this proposed IHA (FRNOR). During the 30–day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and Judith Lee from Environmental Planning Strategies, Inc. (EPS).

*Commission Comment:* The Commission states that because the applicant is requesting authority to take marine mammals by harassment only, NMFS should require that operations be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury could have occurred incidental to the non-native rat eradication program. The Commission further recommends that any such suspension should remain in place until NMFS has: (1) reviewed the situation and determined that further mortalities or serious injuries are unlikely to occur; or (2) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

*Response:* NMFS concurs with the Commission's recommendations and has included a requirement to this effect in the IHA.

*Commission Comment:* The Commission additionally recommends that prior to issuing the IHA, NMFS require the applicant to expand its monitoring plan to detect the effects of disturbance and short- and long- term exposure to the rodenticide, and all mitigation, monitoring, and reporting measures identified in the proposed notice are included in the IHA and the approach be supplemented by the measures described to avoid disturbance and detect problems that may arise after

the rodenticide has been dispersed over the island.

*Response:* NMFS disagrees with the Commission's assessment that rodenticide poses any short- and long-term exposure pathway for harassment, injury, and/or mortality. Pinnipeds are not expected to be impacted by the use of rodenticide (brodifacoum) during the rat eradication operations. Most vertebrates are less susceptible to brodifacoum than are the rats, and would have to consume a higher dose, relative to body mass, before reaching a toxicity threshold. Therefore, pinnipeds would have to directly consume ten's, if not hundreds of bait pellets, to be affected by the rodenticide. The rodenticide bait pellets, which are primarily composed of grain, are not part of the natural diet of carnivorous (almost exclusively piscivorous) pinnipeds and therefore are not expected to be consumed. Also, pinnipeds are not expected to prey or scavenge on other animals that have consumed and succumb to the effects of the rodenticide as they do not feed while hauled out on land. The only possible routes for bait ingestion are accidental. The rodenticide bait will not be broadcast into the marine environment, and if it were to enter the water it will disperse and disintegrate within hours. For secondary exposure through marine fish, which are part of the diet of pinnipeds inhabiting Rat Island, the risk is similarly remote and rodenticide impacts are considered negligible. The number of bait pellets that will enter the marine environment as a result of application activities will be low as a result of the mitigation measures described in the EA and application for avoiding bait application in the ocean.

The probability that fish will consume bait pellets is considered to be very low, and bait pellets will disintegrate rapidly upon contact with the water. In tests conducted by researchers in the Aleutians, as well as in California, Hawaii, and the equatorial Pacific, marine fish species demonstrated almost no interest in placebo bait pellets that entered the water nearby (Buckelew *et al.*, 2007a; Howald *et al.*, 2005; USFWS, 2005). Some marine invertebrates are also included in the diet of pinnipeds inhabiting Rat Island.

Most invertebrate species are not known to be susceptible to toxic effects from the use of brodifacoum in the field (Hoare and Hare, 2006). However, both marine and terrestrial invertebrates (i.e., filter feeders and crabs) are known to consume bait pellets. During a catastrophic accidental spill of 20 tons of brodifacoum into nearshore waters in New Zealand (Primus *et al.*, 2005), a peak concentration of the toxicant measured in mussels occurring at the spill site was 0.41 ppm one day after the spill; this equates to 1/60$^{th}$ of the brodifacoum found in one pellet. Within 30 days, the concentration had dropped to just above 0.002 ppm or 200 times less than peak. The effects of sublethal exposure to the rodenticide is negligible and warrants little concern given the very slight risk during the length of the operations.

Also, sea lions at Rat Island are not anticipated to haul-out in areas that include potentially dangerous steep areas or precipitous cliffs. The persistent haul out at Krysi Point is a beach composed of mixed small boulders and cobbles. Offshore rocks are used by animals. The terrain behind the beach gradually slopes upward to 38 m (125 ft). The islet near Ayugadak Point has boulder beaches backed by steep grass covered slopes. The animals only use the beach areas and do not access the steep areas. NMFS and USFWS has determined that there are no steep or precipitous areas that animals would be flushed from during the rat eradication operations. Also, monitoring and cautionary mitigation measures will be implemented to avoid any potential harassment and report and document disturbances during the authorized field crew activities.

*EPS Comment*: EPS recommends that NMFS deny issuing the IHA for the rat eradication project in order to protect the endangered Steller sea lions on Rat Island and their designated critical habitat. The incidental take of Steller sea lions with and without an aerial application of rodenticide is unnecessary, with the potential for Level A harassment never discussed. Because of the excessive level, timing, and kind of incidental take, including the potential for Level A and Level B harassment, an EIS should be prepared by AMNWR for the project, with full and appropriate public and agency involvement and comment.

*Response:* The purpose and use of rodenticide during rat eradication operations and its potential to not result in Level A harassment is discussed in the proposed IHA's FRNOR (73 FR 34705), USFWS' EA, and this document. The discussion of whether or not the aerial application of the rodenticide is necessary is outside the scope of this IHA. By implementing the monitoring and mitigation measures described in the IHA, Level A takes of marine mammals are highly unlikely and short-term Level B harassment would occur at most. The number of animals taken by Level B harassment would be considered small, and the takes will have a negligible impact on the species and/or stock of marine mammals. If needed (i.e., if the activity did result in injury, which is not authorized), the IHA can be modified, suspended, or withdrawn from the applicant. An EA prepared by USFWS for the Rat Island project was completed and released for full public review. Public comments were considered and a finding of no significant impact (FONSI) was issued by USFWS in March 2008. NMFS adopted the USFWS' EA and issued a FONSI. The NEPA requirements for the issuance of an IHA to USFWS for the Rat Island project have been fulfilled by NMFS.

*EPS Comment:* The potential for all rodents to be exposed to rodenticide with the proposed project, including buffers on Rat Island and the rookery islet and the bait station application, is extremely low. The potential for reinvasion from the islet especially is extremely high. Therefore, the resultant high impacts/takes, including pups and subadults at both Level A and Level B, with little to no short-term or long-term positive results on Rat Island is unacceptable.

*Response:* Comments regarding whether or not the rat eradication program is likely to be effective are outside the scope of determinations that NMFS must make regarding the issuance of an IHA. However, the Rat Island project has been planned for several years with several rounds of review by an independent and international team of experts. The methods proposed have been used to successfully eradicate rodents from hundreds of islands worldwide. The methods proposed for the Rat Island project were developed to successfully eradicate non-native rodents while minimizing secondary impacts to wildlife. The AMNWR has consulted with NMFS representatives regarding the level of disturbance associated with the Rat Island Project. These consultations concluded that Level A Harassment is unlikely to result from this project.

*EPS Comment:* Rat Island was invaded by rats over 200 years ago and the ecological damage has been in place for centuries- the pristine condition has no way to be known- so this project has little potential for improving the ecological condition of the island in any major way, with associated high levels of impacts to endangered Steller sea lions.

*Response:* Whether or not the project has the potential to improve the ecological condition of the island is outside the scope of the IHA. However,

the application indicated that most of the islands in the Aleutian archipelago, including those very near Rat Island, do not have rats and provide a good indication of what the island was like prior to the introduction of rats. If rats are successfully removed, habitat is anticipated to recover and native wildlife species will likely re-colonize the island. The USFWS and its partners would not commit the time, staff, funding, and other resources to a project that had no tangible natural resource benefits. National Wildlife Refuge System lands are mandated to be managed for natural biodiversity.

*EPS Comment:* EPS states that sufficient time has not been allowed to plan, monitor, stage, or implement the project sufficiently for implementation in September or even November 2008. Losing funding is not an appropriate reason to rush a project that is complex, logistically extremely difficult, has a high potential for failure, has high potential for unacceptable impacts, including injury and possibly death to individual Steller sea lions on Rat Island and at the rookery, and is on an extremely large island on which neither the USFWS nor Island Conservation has ever attempted an aerial broadcast.

*Response:* This project has been planned for several years with guidance from and review by an independent, international team of experts. The equipment, supplies, and staff needed for the project to be successful have been secured. The AMNWR and its partners have many years of experience operating in the Aleutian Islands, fully understand the challenges associated with a project of this magnitude and expect to be successful. Also, as mentioned previously, NMFS does not expect the planned activity to result in the injury or death of any marine mammals.

*EPS Comment:* EPS states that the impacts and takes of marine mammals could be higher than evaluated in the application based on pre- and post-monitoring activities and conducted surveys; and suggests that monitoring activities should occur over many years. EPS also states that takes could be higher than evaluated in the application based on and the potential for fuel spills during staging and after project completion.

*Response:* Based on aerial surveys conducted at Rat Island and on the islet off of Ayugadak Point, NMFS determined that numbers of pinnipeds potentially taken by Level B harassment incidental to rat eradication operations is small relative to the population of the species and stock. Activities related to pre- and post project activities have not and will not result in the take of any marine mammals. Due to the remote location of Rat Island as well as the inclement and unpredictable weather in the region, long term pre- and post-monitoring activities would be very difficult to conduct. Marine mammal take related to the Rat Island project is expected to be much lower than requested in the IHA application and will be carefully monitored. Fuel for the Rat Island project will be handled in accordance with all applicable laws and USFWS Region 7 Fuel Policy. Fuel storage areas will use secondary containment that prevents a catastrophic release into the environment. Spill response equipment and 40 hour HAZWOPER trained personnel will be available to all locations where fuel is located and on the Refuge research vessel to be used in the unlikely event of a fuel spill.

**Incidental Take Authorization Requested**

The rat eradication effort and associated operations may result in the taking of marine mammals by Level B incidental harassment only. As a result, the USFWS has requested an IHA for Level B harassment. For this authorization, Level B harassment occurs if an animal moves away any distance in response to the presence of field crew personnel, watercraft, and/or aircraft, or if the animals was already moving and changed direction. Animals that raise their head and look at field crew personnel and/or operated vehicle without moving are not considered disturbed. Most incidental takings will be related to harassment from the noise and visual presence/movement of helicopter operations during the bait application period. A small number of takes could also occur as a result of human presence and boat operations during the course of the project.

Level A take (i.e., injury or mortality) due to stampeding or mother-pup separation is not anticipated during the rat eradication operations. Since the activities will occur after the rookery season, the abundance of pinnipeds should be lower. Injuries or mortalities by stampedes due to field crew personnel, watercraft, and/or aircraft approaches are not anticipated because animals are likely to be more spaced apart, thus when being flushed into the water, it is not likely that they would trample one another.

The use of a rodenticide is not expected to result in any Level A harassment or death of marine mammals. Marine mammals are unlikely to ingest bait pellets of rodenticide opportunistically or accidentally because they are strictly carnivorous and are not carrion eaters. Additionally, the rodenticide is retained at low levels in body tissues and numerous large exposures (on the order of directly consuming tens to hundreds of bait pellets) would have to occur in order to result in injury or death. Based on their known dietary habits, Steller sea lions and harbor seals are not expected to ingest either bait pellets or rat carcasses resulting from rodenticide application.

**Estimated Number of Marine Mammal Takes**

As discussed above, NMFS anticipated that take of marine mammals will occur in the form of disturbance resulting from the presence of helicopters, vessel or pedestrian traffic in the vicinity of the pinnipeds. As also discussed above, no take is expected to result from exposure to rodenticide.

*Rat Island*

Most of the disturbance associated with the Rat Island eradication will be a result of aircraft noise. The helicopters used to apply bait to the island will make two passes across most of the island to ensure success of the project. This could result in two harassment incidents of Steller sea lions and harbor seals that are hauled out at that time. The area surrounding a known Steller sea lion haul out at Krysi Point will be avoided by all activities other than bait application. Harbor seals use many parts of Rat Island shoreline and could also be affected by boat operations and personnel movements. Thus the number of takes was estimated at 2.5 for each individual of this species to account for their sporadic distribution in the water and at haul-outs around the island.

Steller sea lions at Rat Island were counted during an aerial survey in 2004. The number of animals counted during that survey was increased to allow for potential population growth and then used to calculate the total take in Table 4 (below).

The composition of Steller sea lions, which haul out away from rookeries, shifts between seasons and is not well understood. Although no pups are expected at Rat Island, determining the age and sex ratio of animals using the known haul out near Krysi Point in October is difficult at best. For this reason the number is calculated as adult and sub-adult animals without reference to the sex of these animals.

Harbor seals at Rat Island were counted by an aerial survey in 1999 (see Table 4). The number of animals (93 individuals) recorded during that survey

was increased to allow for potential population growth and then used to calculate the total take in Table 4 (below). Information regarding the demographics of harbor seals on Rat Island is not available. The number of animals recorded in the 1999 survey was used to calculate a total number of harbor seal takes.

TABLE 4. ESTIMATED NUMBER OF MARINE MAMMALS AFFECTED BY AIRCRAFT OPERATIONS ON RAT ISLAND.

| Species | # of animals at Rat Island | # of take events per animal | Pups | | Subadults | | Adults | | Total # of Takes |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | M | F | M | F | |
| Steller sea lion | 65 | 2 | 0 | 0 | - | - | - | - | 130 |
| Pacific harbor seal | 100 | 2.5 | 0 | 0 | - | - | - | - | 250 |

M= male, F= female

*Ayugadak Point Rookery*

Project crews will not attempt to access the Ayugadak Point islet by boat in early August and install bait stations as described in the proposed IHA notice (73 FR 34705). The application of bait will be conducted in a manner that will attempt to minimize the disturbance of animals (adults and pups) on the rookery itself. Previous surveys at the islet have sometimes encountered one or two non-breeding bulls outside of the rookery area near the landing area. These were young or old bulls unable to hold a territory at the rookery. A female with a dependent pup has not been encountered outside the rookery area on the islet. However, marine mammals can be unpredictable and this remote possibility cannot be completely discounted. A survey of Steller sea lions was conducted by NMFS in 2005. This survey data was increased to allow for potential population growth and then used to calculate the number of animals anticipated to be affected by this proposed operation plan in the table below. The numbers in the table below also reflect the remote possibility of encountering a female with a dependent pup outside the rookery area.

There are no location-specific population estimates available for harbor seals on the islet off Ayugadak Point. However, the total take estimate of harbor seals in Table 4 (above) already takes proposed personnel activities, such as boat operation and bait station installation, into account. The Level B take of harbor seals at the islet is not anticipated. Recent investigations in the area have not sighted harbor seals using the islet near Ayugadak Point and no animals are expected to be disturbed by operations at that location during the project.

Since project crews will not be able to visit the islet off Ayugadak Point during either of the proposed planned visits in August and October, the islet will be aerially treated at the same time at Rat Island in October. The aerial broadcast will require approximately 15 minutes of flight time, but would likely disturb all sea lions present at the time. Survey numbers from the NMFS survey in 2005 indicate the presence of 83 pups. By October, the pups will be of an adequate size to avoid being trampled by other animals and largely independent of their mothers. NMFS survey data was increased to allow for potential population growth and then used to calculate the number of animals affected by an aerial treatment of the islet in Table 5 (below).

TABLE 5. ESTIMATED NUMBER OF STELLER SEA LIONS AFFECTED BY POSSIBLE AERIAL BROADCAST OF THE ISLET NEAR AYUGADAK POINT, OCTOBER.

| Species | # of animals | # of take events per animal | Pups | Subadults | Adults | Total # of takes |
|---|---|---|---|---|---|---|
| Steller sea lion | 320 | 1 | 100 | 0 | 220 | 320 |

The distribution of pinnipeds hauled-out along the shorelines is not even between sites or at different times of the year. The number of marine mammals disturbed will vary by month and location, and, compared to animals hauled-out on the shoreline farther away from proposed operations, only those animals hauled-out closest to the actual proposed operation sites are likely to be disturbed by the presence of field crew personnel activities and alter their behavior or attempt to move out of the way.

As discussed earlier, the take estimates consider an animal to have been harassed if it moved away any distance in response to the presence of field crew personnel, watercraft, and/or aircraft, or if the animal was already moving and changed direction. Based on past observations and assuming a maximum level of incidental harassment of marine mammals at each site during periods of visitation, NMFS estimates that the maximum total possible numbers of individuals that will be incidentally harassed during the effective dates of the proposed IHA would be 385 Steller sea lions (450 total Level B takes), and 100 Pacific harbor seals (250 total Level B takes) may be taken.

The populations size of the U.S. western stock of Steller sea lions is estimated to be 44,780, with a minimum population estimate of 38,988 animals (Angliss and Outlaw, 2007). Population estimates for the U.S. Gulf of Alaska stock of Pacific harbor seals range from a minimum of 44,453 to an average of 45,975 animals (Angliss and Outlaw, 2007). The estimated total possible number of individuals that will be incidentally harassed during the proposed project is 0.009 and 0.002 percent of the respective Steller sea lion and harbor seal U.S. stock populations for these species. NMFS has determined that these are small numbers, relative to population estimates, of Steller sea lions and Pacific harbor seals.

**Anticipated Impacts to Subsistence Users**

In the Aleutian Islands, rural residents use marine mammal resources for subsistence purposes. The proposed rat eradication operations described in the EA should have no effect on marine

mammal subsistence uses or needs. Rat Island is uninhabited and is located more than 322 km (200 mi) from the nearest rural community of Adak, Alaska. The subsistence resources used by rural residents in the Aleutian Islands are harvested near the islands where the communities are located and no subsistence use of the pinniped species at Rat Island is expected. Rat Island is not known to have been used for marine mammal subsistence purposes since the 1800s.

**Anticipated Impact of the Activity Upon Marine Mammal Habitat**

NMFS anticipates the proposed rat eradication operations described in the IHA application and this document will result in no impacts to the habitat of marine mammals in the Rat Island area beyond rendering the areas immediately around each of the baiting application and broadcasting sites less desirable as haul-out sites for a short time period during the length of the action. Helicopter and field crew operations will occasionally need to enter the Steller sea lions designated critical habitat. USFWS has obtained permission from NMFS for operations within the ''no-entry zones'' established by 50 CFR 223.202. Although Level B Harassment is expected to occur in some instances, these proposed activities will not result in the physical alteration of habitat or lead to any effects on the prey base of Steller sea lions or harbor seals. The rat eradication project should not result in the loss or modification of marine mammal habitat and the application of rodenticide bait are not likely to affect marine mammals during the described operations.

**Mitigation**

Several mitigation measures to reduce the potential for harassment from rat population eradication operations would be (or are proposed to be implemented) implemented as part of the proposed USFWS activities. The potential risk of injury or mortality would be avoided with the following proposed measures.

*Timing*

The eradication will take all measures possible to minimize marine mammal disturbance. This will be especially critical during periods when Steller sea lions and harbor seals are giving birth, mating, rearing young, and molting. Disturbances to females with dependent pups (in the cases of Steller sea lions and Pacific harbor seals) will be mitigated to the greatest extent practicable by avoiding visits to baiting sites with resident pinnipeds during periods of breeding, lactation, and molting when possible. During this period, rat eradication operations would be limited to mostly sites where pinniped breeding, post-partum nursing, and molting does not occur.

The reproductive period for Steller sea lions is generally late May through early July, with a peak in the second and third weeks of June (Pitcher and Calkins, 1981; Gisiner, 1985). Pups stay on land for about two weeks after which they spend increasing time in nearshore waters until they begin to disperse from rookeries to haul-outs with females at about 2.5 months of age (Raum-Suryan *et al.*, 2004; Maniscalco *et al.*, 2002, 2006). In the Aleutian Island area, most pupping is complete by the last week of June and dispersal should occur by mid-September. Molting in Steller sea lions varies by age and sex of animal and is known to last about 45 days. Juveniles molt first, followed by adult females, bull and pups (Daniel, 2003). The molt should be nearly completed during the planned bait application period.

Harbor seals typically give birth during May and June. Pups are usually weaned within a month and no longer need to be close to their mothers. The peak molting period occurs between August and September (Jemison and Kelly, 2001; Daniel *et al.*, 2003).

Conducting bait application operations after marine mammal breeding and molting is complete reduces the potential for disturbances to these species during the sensitive periods of breeding, pup rearing, and molting. Most pinnipeds in the project area are expected to have completed pupping by July, and some young animals that still have associations with their mothers may be present during field operations in September, October, and November. The density of animals will be less during the scheduled operations in the autumn than during the peak breeding season, because animals will no longer be giving birth or holding territories. Limiting visits to the breeding, lactation, and molting sites to periods when these activities do not occur will reduce the possibility of incidental harassment and the potential for injury or mortality of dependent Steller sea lion pups and Pacific harbor seals to near zero. See Table 6 (below) for additional information regarding the limitation and timing of field operations and biologically sensitive periods during the rat eradication project.

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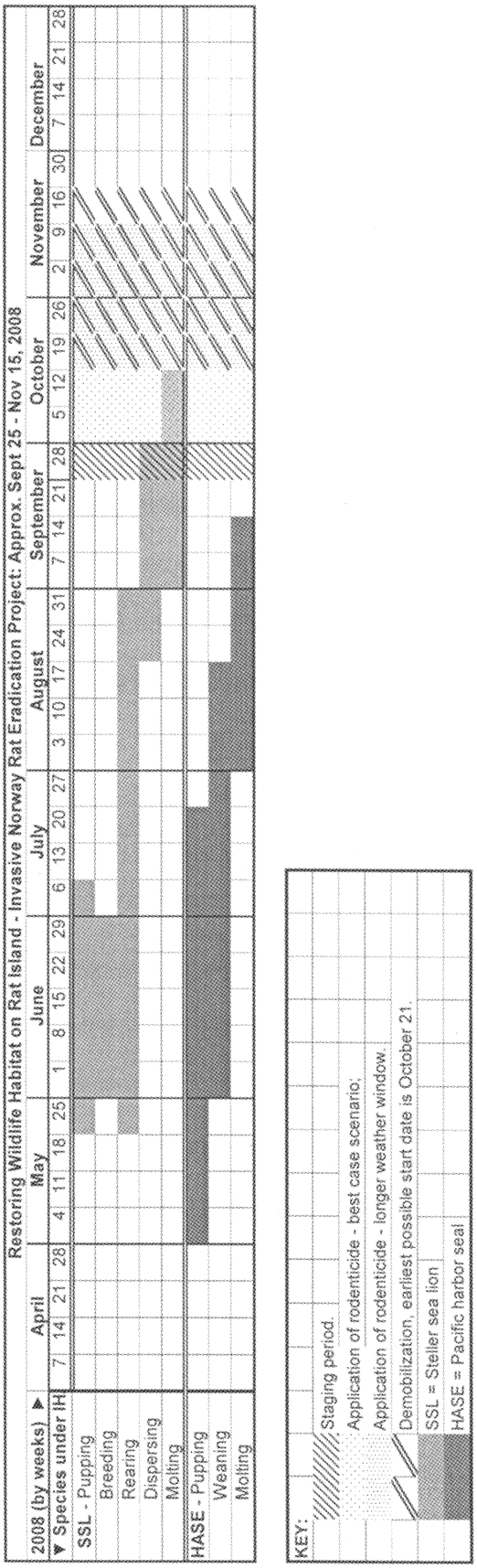
**Table 6. Timing of USFWS Rat Eradication Operations and Biology at Rat Island, AK.**

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*Eradication Operations*

Mitigation of the impacts on affected pinnipeds requires that field crew personnel be judicious in the route of approach to haul-out sites and/or rookeries, avoiding close contact with pinnipeds hauled-out on shore. In no case will marine mammals be deliberately approached by field crew personnel, and in all cases every possible measure will be taken to select a pathway of approach to baiting sites that minimizes the number of marine mammals harassed. After each visit to a given baiting site, the site will be vacated as soon as possible so that it can be re-occupied by hauled-out marine mammals that may have been disturbed by the presence of field crew personnel.

Steller sea lions have a persistent haul-out at Krysi Point at the west end of Rat Island and a rookery on the islet off Ayugadak Point. Steller sea lions are likely to haul-out at other locations on Rat Island as well. During staging operations, helicopter flight lines will avoid the rookery, the known traditional haul-out site (i.e., Krysi Point), and any haul-out sites discovered prior to helicopter operations. Unlike during staging, it will be more difficult to avoid known haul-out sites on Rat Island with the helicopter during bait application because of the need for thorough coverage of the island. In order to minimize the possibility of disturbance to marine mammals, USFWS will be judicious in the route of approach to bait application and broadcast sites, especially those near known haul-out sites and rookeries, during rat eradication operations.

The islet off Ayugadak Point will be baited with the helicopter as described in the EA and IHA application. The helicopter baiting will likely be completed in approximately 15 minutes and disturbance to Steller sea lions is likely to be very short term.

Harbor seals will also be avoided to the greatest extent possible during helicopter operations. During staging operations, project managers will plan helicopter flight lines and boat travel to minimize the potential for disturbance to harbor seal haul-outs known from existing databases and surveys conducted prior to the operations. Unlike during staging it will be more difficult to avoid known haul sites on Rat Island with the helicopter during bait application because of the need for thorough coverage of the entire island. In order to minimize the possibility of disturbance to marine mammals, USFWS will be judicious in the route of approach to bait application and broadcast sites, especially those near known haul-out sites and rookeries, during rat eradication operations.

*Field Crew Personnel*

The Steller sea lion haul-out at Krysi Point on Rat Island will be avoided by personnel involved with this project. The sporadic personnel presence and temporary infrastructure installations that may be necessary near harbor seal haul-outs during both staging and bait application operations may result in localized disturbances, although this is much less likely to disturb animals than proposed helicopter overflights. The camps and staging areas themselves will be well inland and will have negligible impacts on Steller sea lions and harbor seals hauled out on the coastline.

**Monitoring, and Reporting**

When marine mammals are encountered during the project, personnel will record information regarding species, distribution, behavior, and number of animals. When conditions permit, information regarding sex, age (pup, sub-adult, adult) and any marked animals will also be recorded. As part of the monitoring, USFWS will record the numbers of disturbed animals that flush into the water, the number that move more than 1 m (3.3 ft), but do not enter the water, the number that become alert and move, but do not move more than 1 m, and the number that were previously moving and change direction. Upon completion of the project, this information will be compiled and provided to NMFS.

Aircraft and personnel activities related to the proposed project will be coordinated to reduce potential take. The staff of AMNWR and their partners will evaluate incidental take and stop any operations should the potential for incidental take be too great.

Monitoring requirements in relation to USFWS rat eradication operations will include observations made by the applicant and field crew personnel associated with the action. Information recorded will include species counts (with numbers of pups), numbers of observed disturbances, and descriptions of the disturbance behaviors during the proposed rat eradication operations. Observations of unusual behaviors, numbers, or distributions of pinnipeds on Rat Island will be reported to NMFS, so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to NMFS.

If at any time injury or death of any marine mammal occurs that may be a result of the proposed rat population eradication operations, USFWS will suspend baiting application and broadcasting activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur, and to ensure that the applicant remains in compliance with the MMPA. Also, if any injured or dead marine mammal is found at anytime, USFWS will notify NMFS immediately, even if it was likely caused by something other than the specified activities.

A draft final report must be submitted to NMFS within 90 days after the conclusion of the field season. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

**ESA**

For the reasons already described in this **Federal Register** Notice, NMFS has determined that the described rat population extermination operations and the accompanying IHA may have an effect on species or critical habitat protected under the ESA (specifically, the Steller sea lion). Therefore, consultation under Section 7 is required. A Biological Opinion (BiOp) has been prepared by NMFS' Alaska Region. The BiOp reached a no jeopardy determination for listed species and the activity is not likely to result in the destruction or adverse modification of critical habitat, and an incidental take statement was issued for Steller sea lions.

**National Environmental Policy Act (NEPA)**

USFWS prepared an Environmental Assessment (EA) of Restoring Wildlife Habitat on Rat Island, AK, and issued a Finding of No Significant Impact (FONSI) for the preferred alternative. NMFS has adopted the EA and it adequately addressed the effects on the human environment of the proposed action on the issuance of an IHA, for their preferred alternative. NMFS also issued a FONSI, for our preferred alternative. A copy of the EA and FONSI are available upon request (see **ADDRESSES**). A copy of the NMFS prepared FONSI is also available upon request (see **ADDRESSES**).

**Conclusions**

Based on the USFWS' application, as well as the analysis contained herein, NMFS has determined that the taking will have a negligible impact on the affected marine mammal species or stocks. The impact of the described non-native rat extermination at Rat Island will result, at most, in a temporary modification in behavior of small numbers of Steller sea lions and Pacific harbor seals, in the form of head alerts, movement away from personnel, watercraft and aircraft, and/or flushing from the beach. In addition, no take by injury or death is anticipated, and take by harassment will be at the lowest level practicable due to incorporation of the monitoring and mitigation measures mentioned previously in this document. NMFS has further also determined that the anticipated takes not have an unmitigable impact on the availability of affected species or stocks for subsistence use.

**Authorization**

NMFS has issued an IHA to the USFWS for the harassment of Steller sea lions and Pacific harbor seals incidental to non-native rat population eradication operations, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 26, 2008.

**Helen M. Golde,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E8–20276 Filed 8–29–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Federal Consistency Appeal by Foothill/Eastern Transportation Corridor Agency

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

**ACTION:** Notice of public hearing.

**SUMMARY:** This announcement provides notice of a public hearing to be held by the National Oceanic and Atmospheric Administration (NOAA) in California. The hearing involves an administrative appeal filed with the Department of Commerce by the Foothill/Eastern Transportation Corridor Agency (TCA).

**DATE AND LOCATION:** NOAA will conduct the public hearing on September 22, 2008, from 10:30 a.m. to 8:30 p.m., in O'Brien Hall at the Del Mar Fairgrounds, 2260 Jimmy Durante Boulevard, Del Mar, CA 92014.

**ADDRESSES:** Materials from the appeal record will be available at the NOAA Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 and on the following Web site: *http://www.ogc.doc.gov/czma.htm*.

*Comments:* This notice reopens the comment period for public and Federal agency comments. The public comment period will remain open until October 2, 2008. Comments on issues relevant to the Secretary's decision of this appeal may be sent by mail to Thomas Street, Attorney-Advisor, NOAA Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Comments may also be sent via e-mail to *gcos.comments@noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Thomas Street, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, *gcos.inquiries@noaa.gov* or Stephanie Campbell, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, *gcos.inquiries@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** On February 15, 2008, TCA filed notice of an appeal with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR part 930, subpart H. TCA appealed an objection by the California Coastal Commission (Commission) to TCA's proposed construction of an extension to California State Route 241 in northern San Diego and southern Orange Counties, California.

Under the CZMA, the Secretary may override the Commission's objection if he determines that the project is consistent with the objectives or purposes of the CZMA or is otherwise necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes'' of the CZMA, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the state's coastal management program. 15 CFR 930.121.

On March 17, 2008, NOAA published a notice in the **Federal Register** announcing, among other things, that a public hearing might be held concerning this appeal. The hearing will be held. This notice provides scheduling and procedural information about the hearing. Because NOAA anticipates a large number of attendees at the public hearing, NOAA has established the following rules to ensure an orderly and efficient process and to maximize the public input and viewpoints that are received during time allotted.

Members of the public, elected officials, and individuals representing organizations or tribes may give oral testimony at the hearing. Anyone wishing to provide oral testimony at the hearing must submit a written request via United States mail or commercial carrier (Federal Express/UPS/Airborne Express or similar means) to NOAA no later than September 12, 2008. No requests received after close-of-business on September 12, 2008, or requests submitted via e-mail, facsimile, or voicemail will be considered. The written request should be sent to: Thomas Street, Attorney Advisor, NOAA Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Although the submission of a written request is a prerequisite to providing oral testimony, it is not a guarantee that an individual will be afforded the opportunity to testify due to the hearing's time constraints.

A written request must include the individual's full name, address, and a statement of whether the testimony will be provided on behalf of: (i) An individual; (ii) an organization; (iii) an elected official; or (iv) a tribe. In his or her request to testify, an elected official must identify his or her official title and public office. An elected official must testify in person. A public hearing participant who wishes to provide testimony on behalf of an organization must submit the request on the organization's letterhead, identify his or her title within the organization, and certify that the individual is authorized to provide testimony on behalf of the organization. A participant who wishes to provide testimony on behalf of a tribe must identify the tribe and certify that he or she is authorized to provide testimony on behalf of the tribe.

After receipt of written requests to provide testimony, NOAA staff will separate the requests into four general categories: Individuals, elected officials, organizations, and tribes. NOAA will then create a testimony schedule with speakers randomly selected from within each of the general categorical

groupings. Priority will be given to elected officials (first) and individuals representing organizations or tribes (second), with the remaining time allotted to individuals testifying on their own behalf. The testimony schedule will be published on the Department of Commerce Coastal Zone Management Act Web site (*http://www.ogc.doc.gov/czma.htm*) before the hearing.

Speakers from the general public will receive up to three minutes to present oral comments. Elected officials and individuals representing organizations or tribes will receive up to five minutes to speak. In order to accommodate the maximum number of speakers, time limits will be strictly enforced. If any member of the public, elected official, or organizational or tribal representative misses his or her assigned speaking slot, there will be no ability to make it up. Speakers will not be permitted to cede time to another speaker, and only one person may speak on behalf of an organization or tribe.

Written comments on issues relevant to the Secretary's decision in this appeal may be submitted to NOAA at the hearing by any person in attendance. In addition, written comments may be submitted by e-mail to *gcos.comments@noaa.gov* or by mail addressed to Thomas Street, NOAA Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Comments must be received by October 2, 2008.

NOAA officials administering the hearing will not entertain questions, and will not be making any substantive decisions at the hearing. This hearing is being held to obtain information on issues the Secretary will likely consider in deciding the TCA's appeal. A summary of relevant issues as well as additional background on the appeal appeared in the **Federal Register** notice of March 17, 2008, announcing the appeal, and may be found on the Internet at *http://www.ogc.doc.gov/czma.htm*. This Web site also includes additional information on the hearing, including conduct and decorum that is required, restrictions on the use of cameras and recording equipment and the display of signs and banners in the hearing room, the process by which testimony will be transcribed and made part of the record, and other rules and guidelines.

Questions concerning the hearing should be directed to Thomas Street, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, or Stephanie Campbell, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, or *gcos.inquiries@noaa.gov*.

Dated: August 26, 2008.

**Joel La Bissonniere,**

*Assistant General Counsel for Ocean Services.*

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

[FR Doc. E8–20283 Filed 8–29–08; 8:45 am]

**BILLING CODE 3510–08–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XJ87**

### Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); First Fall Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** In preparation for the 2008 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the U.S. Section to ICCAT is announcing the convening of the first of two fall meetings.

**DATES:** The meeting will be held September 15–16, 2008. There will be an open session on Monday, September 15, 2008, beginning from 9 a.m. through 1 p.m. The remainder of the meeting will be closed to the public. There will be no opportunity for oral public comments during the meeting. Written comments on issues being considered at the meeting will be made available to the Advisory Committee, and must be received no later than September 8, 2008 (see **ADDRESSES**).

**ADDRESSES:** The meeting will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. Written comments should be sent to Terra Lederhouse at NOAA Fisheries, Office of International Affairs, Room 12641, 1315 East-West Highway, Silver Spring, MD 20910. Written comments can also be provided via fax (301–713–2313) or email (*Terra.Lederhouse@noaa.gov*).

**FOR FURTHER INFORMATION CONTACT:** Terra Lederhouse, Office of International Affairs, 301–713–9090.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee to the U.S. Section to ICCAT will meet September 15–16, 2008, first in an open session to consider information on stock status of Atlantic highly migratory species, particularly bluefin tuna, yellowfin tuna, skipjack tuna, and sharks. There will be no opportunity for oral public comment during the open session. Written comments, however, may be submitted before the September open session by mail, fax or email and should be received by September 11, 2008 (see **ADDRESSES**).

After the open session, the Advisory Committee will meet in closed session to discuss sensitive information relating to upcoming international negotiations regarding the management of Atlantic highly migratory species. The Advisory Committee will also consider fleet capacity management and monitoring, control and surveillance issues.

#### Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Terra Lederhouse at (301) 713–9090 by at least 5 days prior to the meeting date.

Dated: August 27, 2008.

**Christopher Rogers,**

*Acting Director, Office of International Affairs, National Marine Fisheries Service.*

[FR Doc. E8–20278 Filed 8–29–08; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XJ88**

### Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas; Second Fall Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** In preparation for the 2008 ICCAT meeting, the Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT) will convene its second and final fall meeting in October 2008.

**DATES:** The meeting will be held October 26–28, 2008. There will be an open session the afternoon of Sunday, October 26, 2008, from 2 p.m. to 6 p.m. The remainder of the meeting will be closed to the public. Oral comments can

be presented during the public comment session on October 26, 2008. Written comments on issues being considered at the meeting will be made available to the Advisory Committee, and must be received no later than October 17, 2008 (see **ADDRESSES**).

**ADDRESSES:** The meeting will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. Written comments should be sent to Terra Lederhouse at NOAA Fisheries, Office of International Affairs, Room 12641, 1315 East-West Highway, Silver Spring, MD 20910. Written comments can also be provided via fax (301–713–2313) or email (*Terra.Lederhouse@noaa.gov*).

**FOR FURTHER INFORMATION CONTACT:** Terra Lederhouse, (301) 713–9090.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee to the U.S. Section to ICCAT will meet in open session on October 26. The Advisory Committee will receive management and research related information on the stock status of highly migratory species, including the management recommendations of ICCAT's Standing Committee on Research and Statistics. There will be an opportunity for oral public comment during the October 26, 2008, open session. Written comments may also be submitted for the October open session by mail, fax or email. Written comments should be received by October 17, 2008 (see **ADDRESSES**).

During its second fall meeting, the Advisory Committee will also hold two executive sessions that are closed to the public. The first executive session will be held on October 27, 2008, and a second executive session will be held on October 28, 2008. The purpose of these sessions is to discuss sensitive information relating to upcoming international negotiations.

NMFS expects members of the public to conduct themselves appropriately at the open session of the meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (e.g., alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak, and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

**Special Accommodations**

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Terra Lederhouse at (301) 713–9090 at least five days prior to the meeting date.

Dated: August 27, 2008.

**Christopher Rogers,**

*Acting Director, Office of International Affairs, National Marine Fisheries Service.*

[FR Doc. E8–20279 Filed 8–29–08; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XJ90**

### Advisory Committee and Species Working Group Technical Advisor Appointments

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

**ACTION:** Nominations.

**SUMMARY:** NMFS is soliciting nominations to the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) as established by the Atlantic Tunas Convention Act (ATCA). NMFS is also soliciting nominations for technical advisors to the Advisory Committee's species working groups.

**DATES:** Nominations must be received by October 15, 2008.

**ADDRESSES:** Nominations to the Advisory Committee or for technical advisors to a species working group should be sent to Dr. Rebecca Lent, Director, Office of International Affairs, National Marine Fisheries Service, NOAA, Room 12659, 1315 East-West Highway, Silver Spring, MD 20910. A copy should also be sent to Terra Lederhouse, Office of International Affairs, National Marine Fisheries Service, Room 12641, 1315 East-West Highway, Silver Spring, MD 20910. Nominations can also be provided via fax (301–713–2313) or email (*Rebecca.Lent@noaa.gov* and *Terra.Lederhouse@noaa.gov*).

**FOR FURTHER INFORMATION CONTACT:** Terra Lederhouse, 301–713–9090.

**SUPPLEMENTARY INFORMATION:** Section 971b of ATCA (16 U.S.C. 971 *et seq.*) requires that an advisory committee be established that shall be composed of: (1) not less than five nor more than 20 individuals appointed by the U.S. Commissioners to ICCAT who shall select such individuals from the various groups concerned with the fisheries covered by the ICCAT Convention; and (2) the chairs (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils. Each member of the Advisory Committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment. Members of the Advisory Committee may attend all public meetings of the ICCAT Commission, Council, or any Panel and any other meetings to which they are invited by the ICCAT Commission, Council, or any Panel. The Advisory Committee shall be invited to attend all nonexecutive meetings of the U.S. Commissioners to ICCAT and, at such meetings, shall be given the opportunity to examine and be heard on all proposed programs of investigation, reports, recommendations, and regulations of the ICCAT Commission. Members of the Advisory Committee shall receive no compensation for such services. The Secretary of Commerce and the Secretary of State may pay the necessary travel expenses of members of the Advisory Committee.

There are currently 20 appointed Advisory Committee members. These members' terms expire on December 31, 2008. New appointments will be made as soon as possible, but will not take effect until January 1, 2009.

Section 971b–1 of ATCA specifies that the U.S. Commissioners may establish species working groups for the purpose of providing advice and recommendations to the U.S. Commissioners and to the Advisory Committee on matters relating to the conservation and management of any highly migratory species covered by the ICCAT Convention. Any species working group shall consist of no more than seven members of the Advisory Committee and no more than four scientific or technical advisors, as considered necessary by the Commissioners. Currently, there are four species working groups advising the Committee and the U.S. Commissioners: a Bluefin Tuna Working Group, a Swordfish and Sharks Working Group, a Billfish Working Group, and a BAYS (Bigeye, Albacore, Yellowfin, and Skipjack) Tunas Working Group. Technical Advisors to the species working groups serve at the pleasure of the U.S. Commissioners; therefore, the Commissioners can choose to alter appointments at any time.

Nominations to the Advisory Committee or to a species working group should include a letter of interest and a resume or curriculum vitae. Letters of recommendation are useful but not required. Self-nominations are acceptable. When making a nomination, please clearly specify which appointment (Advisory Committee member or technical advisor to a species working group) is being sought. Requesting consideration for placement on both the Advisory Committee and a species working group is acceptable. Those interested in a species working group technical advisor appointment should indicate which of the four working groups is preferred. Placement on the requested species working group, however, is not guaranteed.

Dated: August 27, 2008.

**Rebecca Lent,**

*Director, Office of International Affairs, National Marine Fisheries Service.*

[FR Doc. E8–20281 Filed 8–29–08; 8:45 am]

BILLING CODE 3510–22–S

## CONSUMER PRODUCT SAFETY COMMISSION

### Notification of Request for Extension of Approval of Information Collection Activity—Customer Satisfaction Surveys

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In the May 29, 2008, **Federal Register** (73 FR 30883), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) (PRA), to announce the agency's intention to seek extension of its PRA approval to conduct surveys to determine the kind and quality of services CPSC customers want and customers' level of satisfaction with existing services. The Commission now announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information.

These customer surveys are used by the CPSC Office of Financial Management, Planning and Evaluation to prepare sections of the agency's annual performance plan and accountability report in accordance with the Government Performance and Results Act of 1993. The information from the surveys will provide measures of the quality and effectiveness of agency efforts related to three goals in its strategic plan: Informing the public, industry services, and customer satisfaction. If this information is not collected, the Commission would not have the means to measure its effectiveness in providing useful services to consumers and others, and lack information necessary to guide program development.

**Additional Information About the Request for Extension of Approval of Information Collection Activity**

*Title of information collection*: Customer Satisfaction Surveys: fast-track recall survey; ombudsman survey, state partner survey, hotline survey, Web site survey and clearinghouse survey.

*Type of request:* Extension of approval.

*Frequency of collection*: Each survey will be conducted once during a 3-year period.

*General description of respondents*: (1) Consumers that telephone the Hotline or access the CPSC Web site via the Internet to report product-related incidents, or to obtain information on recent product recalls; (2) consumers, industry members, or others that contact the National Injury Information Clearinghouse for information; (3) State representatives who work with CPSC on cooperative programs; (4) firms that use CPSC's Fast-Track Product Recall Program to report and simultaneously propose satisfactory product recall plans; and (5) small businesses that seek information or assistance from the CPSC's small business ombudsman.

*Estimated number of respondents:* 684 per year.

*Estimated average number of responses per respondent:* One per year.

*Estimated number of responses for all respondents:* 684 per year.

*Estimated number of hours for all respondents:* 65 hours per year.

*Estimated cost of collection for all respondents:* $1,821 per year.

*Comments*: Comments on this request for extension of approval of an information collection activity should be submitted by October 2, 2008, to the (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) by e-mail to the Office of the Secretary, Consumer Product Safety Commission, at *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone (301) 504–7923.

Copies of this request for approval of information collection and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov*.

Dated: August 26, 2008.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E8–20284 Filed 8–29–08; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF EDUCATION

### National Technical Advisory Council

**AGENCY:** Department of Education, Office of Elementary and Secondary Education.

**ACTION:** Notice of an open meeting.

**SUMMARY:** This notice announces an open meeting of the National Technical Advisory Council. Notice of the meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to participate.

**DATE AND TIME:** Tuesday, September 16, 2008, 10 a.m.–4 p.m.

**ADDRESSES:** U.S. Department of Education, Barnard Auditorium, 400 Maryland Ave, SW., Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Patrick Rooney, Designated Federal Officer, National Technical Advisory Council; 400 Maryland Ave., SW., Room 3W246, Washington, DC 20202; telephone: (202) 401–0113; fax: (202) 260–7764; e-mail: *Patrick.Rooney@ed.gov*.

**SUPPLEMENTARY INFORMATION:** The National Technical Advisory Council is authorized by Secretary Margaret Spellings. Established within the Department of Education (Department) to advise the Secretary of Education and the Assistant Secretary of Elementary and Secondary Education (Assistant Secretary) on the design and implementation of standards, assessments, and accountability systems consistent with Federal statutes and regulations.

At the September 16, 2008, meeting, the Committee will discuss Department guidance related to performance indexes, growth models, and the development of new state assessments and their use in accountability systems.

Individuals who will need accommodations for a disability in order to attend the meeting should notify Courtney Merritt at (202) 401–0113, no later than 5 days before the scheduled date of the meeting. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. There will not be an opportunity for public comment during this meeting.

Records are kept of all Committee proceedings and are available for public inspection at 400 Maryland Ave., SW., Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

*Electronic Access to This Document*: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

**Kerri L. Briggs,**

*Assistant Secretary, Office of Elementary and Secondary Education.*

[FR Doc. E8–20185 Filed 8–29–08; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RR08–5–000]**

### North American Electric Reliability Corporation; Notice of Filing

August 15, 2008.

Take notice that on August 14, 2008, the North American Electric Reliability Corporation filed a Petition for Approval of Amendments to the Bylaws of the North American Electric Reliability Corporation, pursuant to section 215(f) of the Federal Power Act and CFR 39.10.

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 September 3, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–20209 Filed 8–29–08; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RR08–1–003]**

### North American Electric Reliability Corporation; Notice of Filing

August 15, 2008.

Take notice that on August 14, 2008, the North American Electric Reliability Corporation filed a Further Compliance filing in response to paragraph 18 of February 21, 2008, Order, *Order Conditionally Approving Amended Rules of Procedure*, 122 FERC ¶61,142 (2008).

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 September 3, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–20210 Filed 8–29–08; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP08–460–000]**

### Rockies Express Pipeline LLC; Notice of Expedited Comment Date and Petition of the Indicated Shippers for Immediate Injunctive Relief and an Expedited Technical Conference

August 15, 2008.

Take notice that on August 13, 2008, the Indicated Shippers (ConocoPhillips Company, Shell Energy North America (US), L.P., and Yates Petroleum Corporation) filed a petition for immediate injunctive relief and an expedited technical conference. The Indicated Shippers request the Commission to enjoin Rockies Express

Pipeline LLC from engaging in hydrostatic testing on a portion of its pipeline beginning September 3, 2008, and anticipated to end September 26, 2008.

The petition is on file with the Commission and open for public inspection. This petition is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person desiring to intervene in this proceeding or to be heard in response to the petition must file in accordance with the Commission's Rules of Practice and Procedure by the date designated below. The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

*Comment Date:* August 20, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–20211 Filed 8–29–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Records Governing Off-the Record Communications; Public Notice

August 15, 2008.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

| Docket No. | Date received | Presenter or requester |
|---|---|---|
| 1. CP06–365–000, *et al.* | 8–4–08 | Hon. Ron Wyden. |
| 2. P–2677–019 | 8–12–08 | Arie DeWaal. |
| 3. P–2677–019 | 8–13–08 | Michael Donofrio. |
| 4. P–12557–001 | 8–12–08 | Kristen Murphy.[1] |

[1] Memo to the Files—Record of FERC staff's telephone and e-mail communication.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–20208 Filed 8–29–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Notice of Cancellation of Environmental Impact Statement for the Eastern Plains Transmission Project (EPTP), Eastern Colorado and Western Kansas

**AGENCY:** Western Area Power Administration, Department of Energy.

**ACTION:** Notice of cancellation of Environmental Impact Statement.

**SUMMARY:** The U.S. Department of Energy, Western Area Power Administration (Western) is canceling the preparation of an Environmental Impact Statement (EIS) on a proposal by Western to participate with Tri-State Generation and Transmission Association, Incorporated (Tri-State), in the construction of the Eastern Plains Transmission Project (EPTP). Western would have obtained 275 megawatts of capacity rights on the proposed transmission lines by participating in the EPTP. The EIS would have addressed the construction, operation, and maintenance of approximately 1,000 miles of high-voltage transmission lines and ancillary facilities, which included substations, fiber optic installation, access roads, and construction staging areas. Western issued a Notice of Intent to prepare an EIS for the EPTP in the **Federal Register** on August 2, 2006 (71 FR 43733), and conducted 10 public scoping meetings throughout the project area from August 28 through September 14, 2006. Additional public meetings were held in February 2007 (72 FR 2507), and in June 2007 (72 FR 30792). Western is canceling the preparation of the EIS due to anticipated changes in the EPTP scope. If Western decides to participate in the re-defined EPTP, a National Environmental Policy Act review will

be initiated at that time. Tri-State may continue with development of the EPTP.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Hartman, Environmental Manager, Western Area Power Administration, Rocky Mountain Customer Service Region, P.O. Box 3700, Loveland, CO 80539, Telephone: 970–461–7450, Fax: 970–461–7213; or e-mail *hartman@wapa.gov.*

Dated: August 22, 2008.

**Timothy J. Meeks,**

*Adminstrator.*

[FR Doc. E8–20237 Filed 8–29–08; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OA–2007–0706; FRL–8710–2]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP) Annual Reporting Form (Reinstatement); EPA ICR No. 1748.07, OMB Control No. 2060–0337

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to reinstate a previously approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before October 2, 2008.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OA–2007–0706, to: (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Office of Environmental Information Docket (28221T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Angela Suber, Office of Small Business Programs, 1230T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2827; fax number: 202–566–1505; e-mail address: *suber.angela@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 25, 2007, (72 FR 54444), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2007–0706, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

*Title:* State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP) Annual Reporting Form (Reinstatement).

*ICR numbers:* EPA ICR No. 1748.07, OMB Control No. 2060–0337.

*ICR Status:* This ICR is expired. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* As part of the Clean Air Act Amendments of 1990, the U.S. Congress included, as part of Section 507, the requirement that each state establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program to assist small businesses in complying with the Act. These programs are generally known as state Small Business Environmental Assistance Programs (SBEAP). EPA must provide the Congress with periodic reports from the EPA Small Business Ombudsman (SBO) on these programs, including their effectiveness, difficulties encountered, and other relevant information. Each state assistance program will submit requested information to EPA for compilation and summarization. This collection of information is mandatory under Section 507(a), (d), and (e) of the Clean Air Act as amended in 1990, Public Law 101–549, November 15, 1990. This Act directs EPA to monitor the state SBEAPs and to periodically report to Congress and others on the effectiveness of these programs. This responsibility has been delegated to the EPA SBO. Response to the collection is not required to obtain or retain a benefit. Information in the annual 507 Program Report is aggregated and is not of a confidential nature. None of the information collected by this action results in/or requests sensitive information of any nature from the states.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* State Small Business Stationary Source Technical and Environmental Compliance Assistances Programs (SBTCPs).

*Estimated Number of Respondents:* 53.

*Frequency of Response:* Annual.

*Estimated Total Annual Hour Burden:* 2,120.

*Estimated Total Annual Cost:* $96,312, includes $0 annualized capital or O&M costs.

*Changes in the Estimates:* There is no burden currently approved for this ICR. However, the total estimated burden in this ICR is identical to that which was previously approved.

Dated: August 26, 2008.

**Sara Hisel-McCoy,**

*Acting Director, Collection Strategies Division.*

[FR Doc. E8–20243 Filed 8–29–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8710–1]**

## Good Neighbor Environmental Board

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Good Neighbor Environmental Board (GNEB). The Board meets three times each calendar year at different locations along the U.S.-Mexico border and in Washington, DC. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President on environmental and infrastructure issues and needs within the States contiguous to Mexico. The statute calls for the Board to have representatives from U.S. Government agencies; the States of Arizona, California, New Mexico and Texas; tribal representation; and a variety of non-governmental officials. The purpose of this meeting is to hear presentations on local environmental issues as well as the theme selected for the Board's Twelfth Report: Innovation, including Incentives, to Prevent/Reduce Pollution at the U.S.-Mexico Border. The meeting also will include a public comment session and a business meeting on the second day. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/gneb.*

**DATES:** The Good Neighbor Environmental Board will hold an open meeting on Wednesday, September 24 from 8:30 a.m. to 4 p.m. and Thursday, September 25, from 8:30 a.m. to 12 p.m.

**ADDRESSES:** The meeting will be held in El Camino Real Hotel in El Paso, Texas, located at 101 S. El Paso Street, El Paso, Texas, telephone: (915) 534–3000. It is open to the public, with limited seating on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:** Lorena Cedeño-Zambrano, Acting Designated Federal Officer, *cedeno-zambrano.lorena@epa.gov*, 202–566–0978, U.S. EPA, Office of the Administrator (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** Requests to make brief oral comments or provide written statements to the GNEB should be sent to Lorena Cedeño-Zambrano, Acting Designated Federal Officer, at the contact information above.

*Meeting Access:* For information on access or services for individuals with disabilities, please contact Lorena Cedeño-Zambrano at the contact information above. To request accommodation of a disability, please contact Lorena Cedeño-Zambrano, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 19, 2008.

**Lorena Cedeño-Zambrano,**

*Acting Designated Federal Officer.*

[FR Doc. E8–20238 Filed 8–29–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2006–0922; FRL–8704–1]**

## Draft Risk and Exposure Assessment Report for Nitrogen Dioxide ($NO_X$)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of draft report for public review and comment.

**SUMMARY:** On or about August 12, 2008, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available for public review and comment a draft document titled, *Risk and Exposure Assessment to Support the Review of the $NO_2$ Primary National Ambient Air Quality Standard: Second Draft.* This draft document has two purposes: To convey the approaches taken to characterize exposures and risks associated with ambient $NO_2$, and to present the results of these analyses.

**DATES:** Comments on the above reports must be received on or before September 26, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0922, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2006–0922.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID No. EPA–HQ–OAR–2006–0922.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0922.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0922. The 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 home page 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 Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

**FOR FURTHER INFORMATION CONTACT:** Dr. Scott Jenkins, Office of Air Quality Planning and Standards (Mailcode C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *Jenkins.scott@epa.gov*; telephone: 919–541–1167; fax: 919–541–0237.

## General Information

### *A. What Should I Consider as I Prepare My Comments for EPA?*

1. *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 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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

**SUPPLEMENTARY INFORMATION:** Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes national ambient air quality standards (NAAQS) for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Air quality criteria have been established for the nitrogen oxides ($NO_X$) and NAAQS have been established for nitrogen dioxide ($NO_2$), an indicator for gaseous $NO_X$. Presently, EPA is in the process of reviewing the NAAQS for $NO_2$. As part of its review of the NAAQS, EPA is preparing an assessment of exposures and health risks associated with ambient $NO_2$. A draft plan describing the proposed approaches to assessing exposures and risks is described in the draft document, *Nitrogen Dioxide Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment*. This document was released for public review and comment in September 2007 and was the subject of a consultation with the Clean Air Scientific Advisory Committee (CASAC) on October 24 and 25, 2007. Comments received from that consultation were considered in developing the document titled, *Risk and Exposure Assessment to Support the Review of the $NO_2$ Primary National Ambient Air Quality Standard: First Draft,* which was released for public review and comment in April 2008. This document was the subject of a CASAC review on May 1 and 2, 2008. Comments received from that review have been considered in developing the document titled, *Risk and Exposure Assessment to Support the Review of the $NO_2$ Primary National Ambient Air Quality Standard: Second Draft,* which is being released at this time.

This draft document is available online at: *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_cr_rea.html*. It has two primary purposes: To convey the approaches taken to characterize exposures and risks associated with ambient $NO_2$, and to present the results of these analyses. The EPA has solicited advice and recommendations from the CASAC by means of a review of the draft document at a public meeting to be held on September 9–10, 2008 in Research Triangle Park, North Carolina. A separate **Federal Register** notice will provide additional details about this meeting and the process for participation. In preparing a final risk and exposure assessment report, EPA will consider comments received from the CASAC and the public at this upcoming meeting.

Dated: August 7, 2008.

**Jennifer Edmonds,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. E8–20240 Filed 8–29–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8709–9]**

### Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended; Bodie State Historic Park Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice, request for public comments.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Agreement for Recovery of Past Response Costs (''Agreement,'' Region 9 Docket No. 9–2008–16) pursuant to Section 122(h) of CERCLA concerning the Bodie State Historic Park Site (the ''Site''), located in Bodie, Mono County, California. The settling party is the California Department of Parks and Recreation (''DPR''). Through the proposed Agreement, DPR will fully reimburse the United States up to $1,400,000 for response costs incurred at the Site. The Agreement provides DPR with a covenant not to sue for these response costs, and contribution protection. For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed Agreement. The Agency's response to any comments received will be available for public inspection at EPA's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

**DATES:** Comments must be submitted on or before October 2, 2008.

**ADDRESSES:** The proposed Agreement may be obtained from Andrew Helmlinger, in the Office of Regional Counsel, telephone (415) 972–3904. Comments regarding the proposed Agreement should be addressed to Sara Goldsmith at the U.S. Environmental Protection Agency (ORC–3), 75 Hawthorne Street, San Francisco, California 94105, and should reference the Bodie State Historic Park Site, and Region IX Docket No. 9–2008–0016.

**FOR FURTHER INFORMATION CONTACT:** Andrew Helmlinger, Office of Regional Counsel, (415) 972–3904, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: August 20, 2008.

**Nancy Lindsay,**

*Acting Director, Superfund Division.*

[FR Doc. E8–20234 Filed 8–29–08; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, for Extension Under Delegated Authority, Comments Requested

August 26, 2008.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before November 3, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0157.

*Title:* Section 73.99, Presunrise Service Authorization (PSRA) and Postsunset Service Authorization (PSSA).

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents/Responses:* 200.

*Frequency of Response:* Annual reporting requirement; on occasion reporting requirement.

*Estimated Time per Response:* 0.25 hours.

*Total Annual Burden:* 50 hours.

*Total Annual Costs:* $10,000.

*Nature of Response:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i) of the Communications Act of 1934, as amended.

*Confidentiality:* No need for confidentiality is required for this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* 47 CFR 73.99(e) requires the licensee of an AM broadcast station intending to operate with a presunrise or postsunset service authorization to submit by letter the licensee's name, call letters, location, the intended service, and a description of the method whereby any necessary power reduction will be achieved. Upon submission of this information, operation may begin without further authority. The FCC staff uses the letter to maintain complete technical information about the station to ensure that the licensee is in full compliance with the Commission's rules and will not cause interference to other stations.

*OMB Control Number:* 3060–0176.

*Title:* Section 73.1510, Experimental Authorizations.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit entities.

*Number of Respondents/Responses:* 250.

*Estimated Time per Response:* 2.25–5.25 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 1,088 hours.

*Total Annual Costs:* $153,750.

*Nature of Response:* Required to obtain or retain benefits. The statutory

authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Confidentiality:* No need for confidentiality is required for this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* 47 CFR 73.1510 requires that a licensee of an AM, FM, and TV broadcast station to file an informal application with the FCC to request an experimental authorization to conduct technical experimentation directed toward improvement of the technical phases of operation and service. This request shall describe the nature and purpose of experimentation to be conducted, the nature of the experimental signal transmission, and the proposed hours and duration of the experimentation. The data is used by FCC staff to maintain complete technical information about a broadcast station and to ensure that such experimentation does not cause interference to other broadcast stations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–20296 Filed 8–29–08; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## FEDERAL RESERVE SYSTEM

## FEDERAL DEPOSIT INSURANCE CORPORATION

## Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Joint notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, without revision, the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a), which are currently approved information collections. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the reports. The agencies will then submit the reports to OMB for review and approval.

**DATES:** Comments must be submitted on or before November 3, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0100, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to 202–874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling 202–874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, identified by FFIEC 009 or FFIEC 009a, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the OMB control number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

*FDIC:* You may submit written comments, which should refer to ''Country Exposure Reports, 3064–0017,'' by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Comments@FDIC.gov.* Include ''Country Exposure Reports, 3064–0017'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

*Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose/html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Additional information or a copy of the collection may be requested from:

*OCC:* Mary Gottlieb, OCC Clearance Officer, 202–874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board:* Michelle Shore, Federal Reserve Board Clearance Officer, 202–452–3829, Division of Research and Statistics, Board of Governors of the

Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869.

*FDIC:* Herbert J. Messite, Counsel, 202–898–6834, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** Proposal to extend for three years, without revision, the following currently approved collections of information:

*Report Title:* Country Exposure Report and Country Exposure Information Report.

*Form Number:* FFIEC 009 and FFIEC 009a.

*Frequency of Response:* Quarterly.

*Affected Public:* Business or other for profit.

**OCC**

*OMB Number:* 1557–0100.

*Estimated Number of Respondents:* 19 (FFIEC 009), 19 (FFIEC 009a).

*Estimated Average Time per Response:* 70 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

*Estimated Total Annual Burden:* 5,320 burden hours (FFIEC 009), 399 burden hours (FFIEC 009a).

**Board**

*OMB Number:* 7100–0035.

*Estimated Number of Respondents:* 28 (FFIEC 009), 15 (FFIEC 009a).

*Estimated Average Time per Response:* 70 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

*Estimated Total Annual Burden:* 7,840 burden hours (FFIEC 009), 315 burden hours (FFIEC 009a).

**FDIC**

*OMB Number:* 3064–0017.

*Estimated Number of Respondents:* 18 (FFIEC 009), 18 (FFIEC 009a).

*Estimated Average Time per Response:* 70 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

*Estimated Total Annual Burden:* 5,040 burden hours (FFIEC 009), 378 burden hours (FFIEC 009a).

**General Description of Reports**

These information collections are mandatory: 12 U.S.C. 161 and 1817 (national banks), 12 U.S.C. 248(a), 1844(c), and 3906 (state member banks and bank holding companies); and 12 U.S.C. 1817 and 1820 (insured state nonmember commercial and savings banks). The FFIEC 009 information collection is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment.

**Abstract**

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of 1 percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. As part of the Country Exposure Information Report, reporting institutions must also furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less.

**Request for Comment**

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Subject: FFIEC 009 and FFIEC 009a

Dated: August 12, 2008.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

Board of Governors of the Federal Reserve System, August 25, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

Dated at Washington, DC, this 8th day of August, 2008.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E8–20176 Filed 8–29–08; 8:45 am]

**BILLING CODE 6714–01–P; 4810–33–P 6210–01–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 September 16, 2008.

**A. Federal Reserve Bank of Atlanta** (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

*1. Paul Ray, Max Ray,Carole Ray, and Gina Brumley*, all of Hackleburg, Alabama, to collectively acquire additional voting shares of Hometown Bancshares, Inc., and thereby indirectly acquire voting shares of PeoplesTrust Bank, both of Hamilton, Alabama.

Board of Governors of the Federal Reserve System, August 27, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–20246 Filed 8–29–08; 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 September 26, 2008.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

*1. FA Capital, LLC, and Community Bank Investors of America, L.P.*, both of Richmond, Virginia, to acquire up to 58.01 percent of the voting securities of Freedom Bank, Bradenton, Florida.

Board of Governors of the Federal Reserve System, August 27, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–20245 Filed 8–29–08; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Executive Subcommittee Meeting.

*Time and Date:* September 17, 2008, 12:45 p.m.–3:30 p.m.

*Place:* Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 505A, Washington, DC 20201.

*Status:* Open.

*Purpose:* The Executive Subcommittee will hold a strategic planning session, looking at roadmaps and plans for future activities including the 60th Anniversary of the NCHS.

*Contact Person for More Information:* Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: August 25, 2008.

**James Scanlon,**

*Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. E8–20224 Filed 8–29–08; 8:45 am]

**BILLING CODE 4151–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

*Time and Date:* September 16, 2008 9 a.m.–3 p.m.; September 17, 2008 10 a.m.–12 p.m.

*Place:* Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 505A, Washington, DC 20201.

*Status:* Open.

*Purpose:* At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates from the Department relating to Health HIT workforce needs, electronic health records, and personal health records; from the Center for Medicare and Medicaid Services and the Office of the National Coordinator. They will also work on a letter to the HHS Secretary regarding standards and security for e-prescribing standards. In the afternoon there will be a speaker on examples of technology for personal health records and an update from the National Conference for State Legislatures regarding HIT implementation in states.

On the morning of the second day the Committee will discuss subcommittee work. There will also be an update from NCHS Board of Scientific Counselors. In addition there will be a discussion of the NCVHS 60th Anniversary celebration and 21st Century Health Statistics update.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions can be scheduled for late in the afternoon of the first day and second day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

*Contact Person for More Information:* Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: August 26, 2008.

**James Scanlon,**

*Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. E8–20239 Filed 8–29–08; 8:45 am]

**BILLING CODE 4151–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Office of the Assistant Secretary for Planning and Evaluation; State Long-Term Care Partnership Program: State Reciprocity Standard

**AGENCY:** Office of the Assistant Secretary for Planning and Evaluation (OASPE), HHS.

**ACTION:** Notice with Comment Period.

**SUMMARY:** Under section 6021 of Public Law 109–171, the Deficit Reduction Act of 2005 (DRA), States may provide asset disregards (and related estate recovery offsets) for Medicaid applicants who receive benefits under qualified long term care insurance policies (Partnership policies) that were purchased in the same State. This notice sets forth standards for states that choose to enter into a reciprocity agreement under section 6021(b) of the DRA, under which they agree to provide the same disregards and offsets for qualified Partnership policies that a Medicaid applicant purchased in another State that participates in the reciprocity agreement.

**DATES:** To be assured consideration, comments must be received at the address provided below, no later than 5 p.m. on November 3, 2008.

**ADDRESSES:** In commenting, please refer to file code ASPE–PLTC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this notice to *http://www.Regulations.gov.* Click on the link ''Comment or Submission'' and enter the keyword ''PLTC–RS''. (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Office of Disability, Aging, and Long-Term Care, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Attention: PLTC–RS, Hunter McKay, 200 Independence Avenue, SW., Room 424–E, Washington, DC 20201.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Office of Disability, Aging, and Long-Term Care, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Attention: PLTC–RS, Hunter McKay, 200 Independence Avenue, SW., Room 424–E, Washington, DC 20201.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to the following address: Room 424–E, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

*Submitting Comments:* We welcome comments from the public on all issues set forth in this notice to assist us in fully considering issues and developing policies. You can assist us by referencing the file code PLTC–RS and the specific ''issue identifier'' that precedes the section on which you choose to comment.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.Regulations.gov.* Click on the link ''Comment or Submission'' on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC, 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m.

The Department of Health and Human Services will also post communications from stake-holders, as they gain experience with the program, on the web-site for the Office of the Assistant Secretary for Planning and Evaluation: *http://aspe.os.dhhs.gov/_/index.cfm.*

**Electronic Access**

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents' home page address is *http://www.gpoaccess.gov/,* by using local WAIS client software, or by telnet to *swais.access.gpo.gov,* then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

**FOR FURTHER INFORMATION CONTACT:** Hunter McKay, (202) 205–8999.

**SUPPLEMENTARY INFORMATION:**

## I. Legislative Background

Medicaid is a joint Federal/State program established pursuant to title XIX of the Social Security Act. State Medicaid programs under title XIX generally cover medical and long-term care costs for certain people with limited income and resources, pursuant to ''State Plans'' approved by the Secretary of Health and Human Services (''the Secretary''). In general, individuals must have assets below a specified level in order to be eligible for Medicaid. Under certain circumstances, when a State calculates an applicant's assets for purposes of determining Medicaid eligibility, the statute permits the State to disregard an amount equal to benefits paid to or on behalf of the individual under a qualifying long-term care insurance policy purchased in the same State. The statute also allows States to exempt benefits paid under the policy from Medicaid estate recovery after the insured's death.

A State that wishes to apply this asset disregard must submit a Medicaid State Plan Amendment (SPA) for approval by the Secretary. The SPA creates a ''Long-Term Care Partnership'' (''Partnership'') and the long-term care policies that qualify for the asset disregard are referred to here as ''Partnership policies.'' States that have an approved SPA are referred to as ''Partnership States.''

There are two types of Partnership States: those that had SPAs approved before May 14, 1993 (referred to here as ''Original'' Partnership States) and those that have submitted SPAs pursuant to section 6021 of the DRA (referred to here as ''DRA'' Partnership States).

Section 6021(b) of the DRA directs the Secretary to develop standards for Partnership States that wish to provide reciprocal disregards for Medicaid applicants who have purchased a qualified Partnership policy in another Partnership State. Section 6021(b) further provides that these standards must contain the following provisions:

• Benefits paid under such Partnership policies will be treated the same by all such States; and

• States with Partnership Programs established under the DRA shall be subject to these standards unless the State notifies the Secretary in writing of the State's election to be exempt

**II. Reciprocity Standards in the Provision of a Medicaid Asset Disregard For Eligibility Determination and Estate Recovery**

DRA Partnership States that have not elected (under section V, below) to be exempt from the reciprocity standards described below, and Original Partnership States that have elected to adopt such reciprocity standards (as described in Section VI below), are referred to here as ''Participating States.'' Each Participating State agrees as follows:

1. Any individual who has purchased a Partnership policy in any Participating State; who has received benefits under the policy; and who applies for Medicaid in a Participating State other than the one in which the policy was issued, will receive an asset disregard in an amount equal (dollar for dollar) to the benefits received under the policy;

2. The asset disregard procedure and calculation will be the same for every individual with a Partnership policy that applies for Medicaid in the Participating State, without regard to whether the policy was purchased in another State, or the date the policy was purchased;

3. An amount equal to the benefits received under the Partnership policy will be exempt from Medicaid estate recovery provisions; and,

4. If a person moves from the State in which his or her Partnership policy was issued; later applies for Medicaid in another Participating State; and is determined to be eligible using a Partnership asset disregard, the Partnership asset disregard will not be revoked upon eligibility re-determination should the State subsequently decide to become exempt from the reciprocity agreement.

**III. Other State Medicaid Eligibility Provisions Not Affected**

These reciprocity standards only apply to the asset disregard described in Section II, above. Individuals who have received benefits under a Partnership policy, and qualify for an asset disregard, must meet all other Medicaid eligibility requirements in the State in which they are applying for Medicaid coverage. These may include requirements that relate to the Partnership policy, but only if those requirements do not affect the asset disregard.

*Example:* Some Partnership States may require Medicaid applicants holding Partnership policies to exhaust all of the benefits under the policy before becoming eligible for Medicaid. Other Partnership States may allow applicants to apply for Medicaid coverage (and receive dollar for dollar asset disregard) even if residual benefits remain in the policy.

**IV. Effective Date**

These reciprocity standards will become effective on January 1, 2009.

**V. Deemed Participation of States With Partnership Programs Established Under the DRA**

As required by the statute, all DRA Partnership States will be deemed to be participating in the reciprocity agreement unless they elect to be exempt from the reciprocity standards by notifying the Secretary, in writing, of their election.

All States with State Plan Amendments effective dates prior to January 1, 2009, will be deemed to be participating in the reciprocity standards unless, prior to the effective date of these standards, the State elects exemption from the standards through a new SPA.

States with State Plan Amendment effective dates after January 1, 2009 will also be deemed to be participating in the reciprocity standards unless they elect exemption through a SPA.

**VI. Participation by States Operating a Partnership Under the Authority of a State Plan Amendment Approved Prior to May 14, 1993**

States with State Plan Amendments approved prior to May 14, 1993 may elect to adopt these reciprocity standards, and participate with those States operating a Partnership under the authority of the DRA. To do so, those States must submit a new SPA to that effect. Such States must agree to accept all of the reciprocity standards with respect to all other Participating States.

**VII. Effect of Reciprocity Exemption**

In order for a Medicaid applicant to be eligible for the asset disregard, both the State in which the individual is applying, and the State in which the Partnership policy was purchased, must currently be participating in the reciprocity standards. Accordingly, a State that elects an exemption from the reciprocity standards will not provide an asset disregard for Medicaid applicants who originally purchased Partnership policies in other, participating, Partnership States. Similarly, persons who originally purchased Partnership policies in a State that elected exemption from the reciprocity standards will not be eligible for asset disregards in other Partnership States. Once a State elects exemption from the standards, the exemption applies regardless of when a Medicaid applicant originally purchased a Partnership policy in another State (i.e., even if the Medicaid applicant purchased the policy prior to the date on which a State elected exemption from the reciprocity standards).

**VIII. Notice of Exemption by Currently Participating States**

States that are currently participating in the reciprocity agreement agree that they will provide written notice to the Secretary at least 60 days prior to the effective date of electing an exemption from the reciprocity standards. The 60-day notification period makes it possible for the Department to notify other Participating States that, as of the effective date of withdrawal, asset disregards should no longer be made available to Medicaid applicants who originally purchased their policies in the State electing an exemption.

**IX. Withdrawal of Reciprocity Exemption**

A State which has elected exemption from the Partnership reciprocity standards may also withdraw its election at any point. A State may do so by submitting a new SPA. Once a State withdraws its election, the State agrees that reciprocity will be applied to all people holding Partnership policies regardless of when the policy was originally purchased.

**X. Outside Agreements**

There is nothing in these reciprocity standards which prohibits states from entering into reciprocity agreements with other states on a state-by-state basis, should they elect exemption from these reciprocity standards. The Department will create a communication mechanism for informing states and the public about which states have approved Partnership programs and which states are participating in these reciprocity standards.

**XI. Change in Participation Status**

States that wish to change their participation status should submit a new state plan amendment.

Dated: August 20, 2008.

**Mary M. McGeein,**

*Principal Deputy Assistant Secretary for Planning and Evaluation.*

[FR Doc. E8–20225 Filed 8–29–08; 8:45 am]

**BILLING CODE 4154–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2006–N–0166] (formerly Docket No. 2006N–0238)**

### Maria Anne Kirkman Campbell; Denial of Hearing; Debarment Order

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Dr. Maria Anne Kirkman Campbell (Dr. Campbell) from providing services in any capacity to a person that has an approved or pending drug product application. We base this order on a finding that Dr. Campbell was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product, and conduct otherwise relating to the regulation of a drug product under the act. Dr. Campbell failed to request a hearing and, therefore, has waived her opportunity for a hearing concerning this action. Even assuming that any statement in Dr. Campbell's correspondence with FDA were to be construed as requesting a hearing, Dr. Campbell has failed to file with the agency information and analyses sufficient to create a basis for a hearing concerning this action. Therefore, we are, in the alternative, issuing an order denying any such assumed request for a hearing because we find that there is no genuine and substantial issue of fact to grant a hearing on the debarment, if a hearing were requested.

**DATES:** This order is effective September 2, 2008.

**ADDRESSES:** Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Brian Pendleton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6304, Silver Spring, MD, 20993–0002, 301–796–3504.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 306(a)(2)(A) of the act (21 U.S.C. 335a(a)(2)(A)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product. Section 306(a)(2)(B) of the act requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the act.

On March 25, 2004, the U.S. District Court for the Northern District of Alabama accepted Dr. Campbell's plea of guilty and convicted her of one count of mail fraud, a felony under 18 U.S.C. 1341 and 2. Specifically, Dr. Campbell admitted to submitting a fraudulent case report form (reflecting enrollment of a nonexistent person) while serving as a clinical investigator in a clinical study designed to test the safety and effectiveness of an antibacterial drug product, Ketek (telithromycin), for the treatment of respiratory tract infections. The clinical study was to be submitted to FDA in support of approval of Ketek.

Accordingly, in a letter dated February 28, 2007, and hand delivered on March 5, 2007, FDA served Dr. Campbell a notice proposing to permanently debar her from providing services in any capacity to a person having an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) and (a)(2)(B) of the act, that Dr. Campbell was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product, and conduct otherwise relating to the regulation of a drug product. The letter offered Dr. Campbell an opportunity to request a hearing on the proposal, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action.

The letter also informed Dr. Campbell that her request for a hearing could not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact requiring a hearing. In addition, the letter informed Dr. Campbell that the only material issue of fact was whether she was convicted as alleged in the letter, and that the facts underlying her conviction are not at issue in this proceeding. The letter also informed Dr. Campbell that if it conclusively appeared from the face of the information and factual analyses in her request for a hearing that there was no genuine and substantial issue of fact that precluded the order of debarment, we would deny her request for a hearing and enter a final order of debarment. Finally, the letter informed Dr. Campbell that if she were to file a request for a hearing, she was required to file, on or before 60 days from the date of receipt of the letter, the information on which she relied to justify a hearing.

Dr. Campbell has responded to the proposal to debar her but has not requested a hearing.[1] Her failure to request a hearing constitutes a waiver of her opportunity for a hearing and a waiver of any contentions concerning her debarment.

Even assuming that any statement in Dr. Campbell's correspondence with FDA were to be construed as requesting a hearing, Dr. Campbell has not submitted information that would justify granting a hearing. Therefore, we are, in the alternative, hereby denying any such assumed request for a hearing because Dr. Campbell has failed to show that there is a genuine and substantial issue of fact requiring a hearing. Dr. Campbell has not offered any information or factual analyses to refute that she was convicted of mail fraud for conduct relating to the development or approval of a drug product, or otherwise relating to the regulation of a drug product under the act.

## II. Findings and Order

Therefore, the Associate Commissioner for Regulatory Affairs, under section 306(a)(2)(A) and (a)(2)(B) of the act and under authority delegated to her, finds that Dr. Maria Anne Kirkman Campbell has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for

[1]After we served Dr. Campbell on March 5, 2007, with notice of the agency's proposal to debar her, Dr. Campbell sent a series of letters to the agency—dated March 9, 2007, April 6, 2007, May 23, 2007, July 17, 2007, August 21, 2007, and January 13, 2008,—and participated in a teleconference with FDA on April 9, 2007. Although some of Dr. Campbell's correspondence refers to another proceeding the agency initiated against Dr. Campbell (investigator disqualification under 21 CFR 312.70), instead of, or in addition to, the proposal to debar her, for the purposes of this order, we have taken into account all of Dr. Campbell's correspondence with the agency after March 5, 2007, as well as the transcript from the April 9, 2007, teleconference.

development or approval, of a drug product, and conduct otherwise relating to the regulation of a drug product under the act.

As a result of the foregoing finding, Dr. Maria Anne Kirkman Campbell is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective as stated in the **DATES** section of this document (see section 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Campbell in any capacity, during her period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Dr. Campbell, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug application submitted by or with the assistance of Dr. Campbell during her period of debarment (section 306(c)(1)(B) of the act).

Any application by Dr. Campbell for special termination of debarment under section 306(d)(4) of the act should be identified with Docket No. FDA–2006–N–0166 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 22, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–20295 Filed 8–29–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0455]**

## Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables; Request for Comments and for Scientific Data and Information

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

**ACTION:** Notice; request for comments and for scientific data and information.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting comments and scientific data and information that may assist the agency to improve the guidance to industry set forth in the ''Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables,'' issued in 1998. Specifically, FDA is seeking information about current agricultural practices and conditions used to grow, harvest, pack, cool, and transport fresh produce; risk factors for contamination of fresh produce associated with these practices; and possible measures that FDA could implement that would enhance the safety of fresh produce.

**DATES:** Submit written comments and scientific data and information or electronic comments by December 31, 2008.

**ADDRESSES:** Submit written comments and scientific data and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments and scientific data and information to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to this document.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2024.

**SUPPLEMENTARY INFORMATION:**

### I. Background

#### *A. Food Safety and Fresh Produce*

FDA is responsible for ensuring the safety of all domestic and imported fresh fruits and vegetables consumed in the United States. Fresh fruits and vegetables are those that are likely to be sold to consumers in an unprocessed or minimally processed (i.e., raw) form. Fresh fruits and vegetables may be intact and whole, such as whole apples, or cut in the act of harvest, such as heads of lettuce and bunches of broccoli.

Because most fresh produce is grown in a natural environment, it is vulnerable to contamination with pathogens (i.e., bacteria or other organisms that can cause disease). Factors that may affect the occurrence of such contamination include agricultural and/or post-harvest water quality, the use of manure as fertilizer, the presence of wild or domestic animals in or near fields or packing areas, worker health and hygiene, environmental conditions, production activities, and equipment and facility sanitation. Consequently, the manner in which fresh produce is grown, harvested, packed, cooled, and transported is crucial to minimizing the risk of microbial contamination. (We use the term ''microbial contamination'' to refer to contamination with any microorganism.)

Data reported to the U.S. Centers for Disease Control and Prevention (CDC) indicate that between 1973 and 1997 reported outbreaks of foodborne illness in the United States associated with fresh produce increased in absolute numbers and as a proportion of all reported foodborne outbreaks (Ref. 1). (By ''outbreak,'' we mean the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.) Unpublished data compiled by FDA indicate that from 1996 to 2007 there were approximately 72 reported outbreaks of foodborne illness associated with approximately 20 fresh produce commodities. Of this total, 13 outbreaks were associated with tomatoes, 11 outbreaks were associated with melons, and 24 outbreaks were associated with leafy greens such as lettuce and spinach (Ref. 2). These outbreaks involved a number of pathogens, including *Escherichia coli* (*E. coli*) O157:H7 and *Salmonella* species, and involved both domestic and imported produce. These totals include only those outbreaks in which our investigation has indicated that the contamination of the produce was not a result of exposure to an infected food handler or other unsafe food handling practice at the place of preparation and consumption (i.e., home or restaurant). There have also been a number of reported outbreaks associated with fresh produce in 2008.

#### *B. FDA's GAPs/GMPs Guide*

FDA places a high priority on identifying and promoting measures that can reduce the incidence of foodborne illness associated with fresh produce. In 1998, FDA and the U.S. Department of Agriculture issued

guidance to industry entitled ''Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables'' (Ref. 3), to enhance the safety of fresh produce, to assist the fresh produce industry in addressing common risk factors in their operations, and to minimize potential food safety hazards. (The document is referred to hereinafter as the ''GAPs/GMPs Guide''—GAPs is an abbreviation of ''good agricultural practices'' and GMPs is an abbreviation of ''good manufacturing practices.'') While FDA recognizes current technologies cannot eliminate all potential food safety hazards associated with fresh produce that will be eaten raw, the GAPs/GMPs Guide emphasizes that implementation of risk reduction measures is critical to minimizing these potential food safety hazards. The agency has worked with the fresh produce industry and other food safety partners since the issuance of the GAPs/ GMPs Guide to promote its recommendations and to advance the scientific knowledge applicable to enhancing the safety of fresh produce, and the GAPs/GMPs Guide has been used as a basis for a number of food safety programs, both in the United States and internationally. Choices by buyers to purchase from producers and other suppliers that provide self- or third-party audit verification that they are following the GAPs/GMPs Guide have further promoted adoption of the guidance.

Subsequent to the issuance of the GAPs/GMPs Guide, FDA has undertaken a number of produce safety initiatives that have enhanced its understanding of the effectiveness of the GAPs/GMPs Guide in reducing the risk of produce-associated foodborne illness. Examples include the 2004 ''Produce Safety From Production to Consumption: 2004 Action Plan to Minimize Foodborne Illness Associated with Fresh Produce Consumption,'' commonly called the ''Produce Safety Action Plan'' (Ref. 4), which focuses on prevention of contamination, minimization of public health impacts when contamination does occur, communication with the public and stakeholders, and facilitation and support of research; the multi-year ''Leafy Greens Safety Initiative'' (Ref. 5), launched in 2006 in collaboration with the State of California, which involves assessment of practices and conditions at select farms and facilities in California, including adoption and implementation of good agricultural practice and good manufacturing practice recommendations (for packing houses) and requirements (for fresh-cut processing facilities); and the 2007 ''Tomato Safety Initiative'' (Ref. 6), a multi-year collaboration similar to the ''Leafy Greens Safety Initiative'' with the States of Virginia and Florida, as well as several universities and members of the produce industry.

Available data and FDA's experience suggest that the GAPs/GMPs Guide (and other public and private sector efforts) have accurately identified certain potential sources of microbial contamination of fresh produce, such as agricultural water and worker health and hygiene. Data and experience also indicate that the recommendations in the GAPs/GMPs Guide can be effective when implemented. However, the fact that outbreaks of foodborne illness associated with fresh produce continue to occur supports a close examination of the extent to which the recommendations in the GAPs/GMPs Guide have been implemented; the extent to which they have been effective, if implemented properly; and what additional or different interventions might be appropriate to reduce the risk of future outbreaks. The agency recognized when it issued the GAPs/GMPs Guide in 1998 that it would need to be updated ''[a]s new information and technological advances expand the understanding of those factors associated with identifying and reducing microbial food safety hazards'' (Ref. 3). In the 10 years since the GAPs/ GMPs Guide was released many changes have occurred in the produce industry, and a great deal of new knowledge and information have become available. In addition, the agency now has 10 years experience in implementing this guidance and observing how and the extent to which it has been implemented by the industry.

In addition to the initiatives described previously, in 2007 FDA held two public hearings to inform stakeholders about produce-associated outbreaks and to solicit comments to inform the agency in determining the next steps (Ref. 7). In both instances, the agency asked a series of questions. Among these questions, we asked whether FDA's current GAPs/GMPs Guide needs to be expanded or otherwise revised, and if the response was yes, we solicited comments about what areas need to be expanded or otherwise revised. Comments were generally in agreement that the basic principles set out in the 1998 guidance remain sound. However, they were split on whether FDA should update the GAPs/GMPs Guide and, if so, how it might be revised. Several comments suggested the GAPs/GMPs Guide should provide more specific and directive recommendations. A number of comments suggested that the GAPs/ GMPs Guide needs more explicit information to facilitate risk assessment. Other comments urged FDA to keep the GAPs/GMPs Guide broad in scope, and to focus instead on education/outreach to promote adoption of existing recommendations.

FDA has taken the comments received in response to the 2007 public hearings into consideration and incorporated relevant suggestions as it conducts the produce safety activities mentioned in this **Federal Register** document and other activities implementing the ''Produce Safety Action Plan.'' However, because most comments did not provide substantive information or data in response to this question, FDA has determined that it would benefit from another, more focused opportunity for public comment.

Thus, FDA is now soliciting comments and scientific data and information on any possible measures and technological advances that would assist the agency in improving the agency's current GAPs/GMPs Guide. Specifically, FDA is seeking information and comment on the issues and questions in section II of this document. When possible, please provide scientific information and data in support of your comments. In addition, please provide information as specific as is feasible about the estimated costs and benefits associated with your responses (e.g., the costs and benefits of current practices and/or the cost and benefits of any recommendations you may make). FDA is not seeking information and comment on issues of traceability in this document, because FDA plans to do so in the context of a public meeting.

## II. Issues and Questions

Issue 1: The GAPs/GMPs Guide addresses potential sources of microbial contamination associated with a range of issues, or variables, such as: Water (both agricultural water and post harvest water uses); manure and municipal bio-solids; worker health and hygiene; packing facility sanitation; transportation; and traceback (Ref. 3). Data from our experience over the past decade support the inclusion of many of these issues as risk factors for produce-associated foodborne illness outbreaks. Some of these potential sources of contamination in particular, such as worker health and hygiene, water quality (pre- and post-harvest), domestic and wild animal issues, and facility and equipment sanitation have been cited frequently by investigators during inspections at farms and facilities that were implicated in outbreak investigations. On the other hand,

although there remains a significant potential for contamination, some issue areas, such as the intentional use of manure or bio-solids as an agricultural input, have not been cited as a potential source of contamination to the same extent. The current guidance does not attempt to rank the potential hazard variables in terms of relative risk or importance.

Question 1. Should any future GAPs/GMPs Guide rank or prioritize among potential issues according to relative risk or importance? If yes, please offer suggestions of how that information could most effectively be presented in a way that does not detract from the broad scope of the current guidance.

Issue 2: The GAPs/GMPs Guide tends to be arranged by issue area, while more recent industry commodity specific supply chain guidelines are divided according to where the commodity is within the supply chain (e.g., production, packing, distribution) and/or the chronological order of activities at each step.

Question 2. How should the GAPs/GMPs Guide be organized to enhance its usefulness?

Question 3. While the GAPs/GMPs Guide has been generally accepted and widely adopted, we know that there are entities in the fresh produce industry that are not aware of it. What measures can be taken, and by whom, to expand awareness by the fresh produce industry of the GAPs/GMPs Guide?

Question 4. How should the GAPs/GMPs Guide be modified to motivate all operations to implement? Please include information on economic impact.

Question 5. Can the GAPs/GMPs Guide be applied equally to, and implemented by, domestic and foreign growers and packers? If not, should the GAPs/GMPs Guide be revised to incorporate additional options or special considerations (e.g., utilizing draft animals for agricultural tasks) for application and implementation? Please explain.

Question 6. Is there a need for additional guidance to assist an operator in determining which provisions of the Current Good Manufacturing Practice regulations in part 110 (21 CFR part 110) (e.g., post-harvest water quality, disease control, cleanliness, and supervision) could be implemented voluntarily for operations that currently are excluded under § 110.19? If so, which ones?

Issue 3: Written food safety plans, sanitation standard operating procedures (SSOPs), standard operating procedures (SOPs), and monitoring records serve as useful tools for both industry and regulators. Such records assist operators to conduct operations in a manner that enhances the safety of fresh produce. For growers, an assessment of factors such as the field environment and agricultural inputs contributes to the development of written food safety plans and SOPs, and also helps to determine which factors should be monitored and the frequency of such monitoring. (The use of the term ''assessment'' refers to an evaluation conducted by, or on behalf of, a grower or operator to identify measures to enhance food safety.)

Written food safety plans, SOPs, SSOPs, and monitoring records also assist regulators to verify consistent and long-term implementation of certain practices. On-site inspections, either alone or in conjunction with records review, are another approach to such verification. (The use of the term ''inspection'' refers to an evaluation conducted by, or on behalf of, a regulator to evaluate whether operations comply with applicable guidance or regulations. The term ''audit'' refers to a self or third-party evaluation of whether operations are consistent with voluntary guidelines and written food safety plans or SSOPs developed by the grower, operator, or buyer.)

Question 7. Should the GAPs/GMPs Guide recommend that growers and/or other relevant operations develop a written food safety plan, written SOPs, and/or written SSOPs? If so, please describe the types of information or recommendations that you believe would be helpful.

Question 8. Records can be divided into the following two broad groups: (1) Records to facilitate traceback, and (2) non-traceback or operational records. Does the GAPs/GMPs Guide provide sufficient recommendations regarding record keeping? If not, please describe what would be most helpful and why, e.g., information about the record keeping regulation (21 CFR 1 subpart J), guidance on what makes a ''good'' record, guidance on periodic record review and verification, and required or recommended record retention times. What types of monitoring records or other documentation would be most useful to industry and regulators?

Question 9. The recent produce safety initiatives concerning leafy greens and tomatoes (Refs. 5 and 6) have highlighted the importance of performing environmental assessments (e.g., assessing water source quality, water distribution systems, animal presence, and other risk factors that may be associated with the production environment) before planting, throughout production, and prior to harvest. Would it be useful to enhance coverage of these concepts in the GAPs/GMPs Guide? If yes, please describe.

Question 10. Several newer produce safety programs, such as the California Leafy Green Products Handler Marketing Agreement (Ref. 8), incorporate recommendations (or requirements) for microbial testing. Does the information on microbial testing in the GAPs/GMPs Guide provide sufficient information to assist operators in designing a meaningful and cost effective testing program? If not, please describe what types of additional information would be most useful, such as how and where microbial testing might best be used to achieve food safety objectives, e.g., building a history of agricultural water quality, making best management decisions, verifying food safety operations.

Question 11. Some comments submitted in connection with the 2007 public hearings expressed concerns that field management activities intended to minimize microbial hazards, such as removing vegetation to reduce animal harborage near the production field, could have a negative, albeit unintended, impact on the environment and water sheds, among other areas. What data support these concerns? Could/should the GAPs/GMPs Guide do more to identify, address, and possibly mitigate unintended environmental consequences of food safety measures?

Question 12. Are there existing regulatory requirements at the Federal, State, or local level that act as a disincentive (or as an incentive) for growers or other operators to implement agricultural or manufacturing practices that should be taken into consideration when updating this guidance to reduce the risk of microbial contamination of fresh produce? If yes, please identify and explain.

## III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket

management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

## IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Sivapalasingam, S., et al. ''Fresh Produce: A Growing Cause of Outbreaks of Foodborne Illness in the United States, 1973 through 1997,'' *Journal of Food Protection* 67(10): 2342–53, 2004.

2. U.S. Food and Drug Administration, 1996 to 2007 Produce Outbreaks (unpublished compilation).

3. U.S. Food and Drug Administration, ''Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables,'' October 26, 1998, available at *http://www.cfsan.fda.gov/~dms/prodguid.html*.

4. U.S. Food and Drug Administration, ''Produce Safety From Production to Consumption: 2004 Action Plan to Minimize Foodborne Illness Associated with Fresh Produce Consumption,'' October 2004, available at *http://www.cfsan.fda.gov/~dms/prodpla2.html*.

5. U.S. Food and Drug Administration, ''Leafy Greens Safety Initiative—2nd year,'' October 4, 2007, available at *http://www.cfsan.fda.gov/~dms/lettsaf2.html*.

6. U.S. Food and Drug Administration, ''Tomato Safety Initiative,'' June 12, 2007, available at *http://www.cfsan.fda.gov/~dms/tomsafe.html*.

7. ''Safety of Fresh Produce; Public Hearings; Request for Comments'' (72 FR 8750, February 27, 2007), Public hearings held on March 20, 2007, and April 13, 2007, *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=FDA–2007–N–0380*.

8. California Leafy Green Products Handler Marketing Agreement, available at *http://www.caleafygreens.ca.gov*.

## II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/~dms/prodguid.html*.

Dated: August 19, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–20187 Filed 8–29–08; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0466]**

### Over the Counter Cough and Cold Medication for Pediatric Use; Notice of Public Hearing; Correction

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

**ACTION:** Notice of public hearing; request for comments; correction.

**SUMMARY:** The Food and Drug Administration is correcting a notice that published in the **Federal Register** on August 25, 2008 (73 FR 50033). The notice announced a public hearing to obtain input regarding over-the-counter (OTC) cough and cold drugs marketed for pediatric use. Due to some confusion regarding electronic registration, this notice revises the electronic registration procedures, and corrects the address for the contact person.

**DATES:** The correction is effective September 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Faith Dugan, Food and Drug Administration, 10903 New Hampshire Ave., rm. 6182, Silver Spring, MD 20993, 301–796–3446, Faith.Dugan@fda.hhs.gov.

**SUPPLEMENTARY INFORMATION:** In FR Doc. E8–19657, published on August 25, 2008 (73 FR 50033), the following correction is made to **ADDRESSES**:

1. On page 50033, in the first and second columns, the **ADDRESSES** section is corrected to read as follows:

**ADDRESSES**: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

E-mail electronic registration to: Faith.Dugan@fda.hhs.gov. Anyone who has already registered via *http://www.regulations.gov* does not have to re-register. The agency will accept those registrations.

Submit electronic comments to *http://www.regulations.gov*. All comments should be identified with the docket number found in brackets in the heading of this document.

Transcripts of the hearing will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the hearing.

For Registration to Attend and/or Participate in the Hearing: Seating at the hearing is limited. People interested in attending should submit electronic registration to Faith Dugan by close of business on September 15, 2008. Registration is free and will be on a first-come, first-served basis. Written or electronic comments will be accepted until December 2, 2008.

If you wish to make an oral presentation at the hearing, you must state your intention on your registration submission (see **ADDRESSES**). To speak, submit your name, title, business affiliation, address, telephone and fax numbers, and e-mail address. FDA has included questions for comment in section II of this document. You should also identify by number each question you wish to address in your presentation. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin.

If you need special accommodations because of a disability, please inform Faith Dugan, (see For Information on the Hearing Contact).

For Information on the Hearing Contact: Faith Dugan, Food and Drug Administration, 10903 New Hampshire Ave., rm. 6182, Silver Spring, MD 20993 , 301–796–3446, FAX: 301–847–4752, e-mail: Faith.Dugan@fda.hhs.gov.

Dated: August 27, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–20370 Filed 8–28–08; 11:15 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Neurological Sciences Training Initial Review Group, NST–1 Subcommittee.

*Date:* September 8–9, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The M Street Renaissance Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

*Contact Person:* Raul A. Saavedra, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: August 25, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–20183 Filed 8–29–08; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, T35 Short-Term Institutional Research Training Grant.

*Date:* September 24, 2008.

*Time:* 12 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Christopher Moore, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd, Rm. 400C, Bethesda, MD 20892–7180, 301–402–3587, *moorechristopher@nidcd.nih.gov.*

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, P30 Research Core Center.

*Date:* September 30, 2008.

*Time:* 1:30 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Christine A. Livingston, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health/ NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03 Hearing and Balance.

*Date:* October 7, 2008.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03 Voice, Speech, & Language.

*Date:* October 9, 2008.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Christopher Moore, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd, Rm. 400C, Bethesda, MD 20892–7180. 301–402–3587, *moorechristopher@nidcd.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS).

Dated: August 25, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–20184 Filed 8–29–08; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, AD Coordinating Center.

*Date:* September 26, 2008.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Gateway, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814 (Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, PhD, DSC, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814, 301–496–9666, *markowsa@nia.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Alzheimer Pathogenesis I.

*Date:* October 2, 2008.

*Time:* 3 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Bldg., 7201 Wisconsin Avenue, Rm 2C212, Bethesda, MD 20814 (Telephone Conference Call).

*Contact Person:* Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Mitochondria in Neurodegenerative Disease I.

*Date:* October 27, 2008.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Bldg., 7201 Wisconsin Avenue, Rm 2C212, Bethesda, MD 20814 (Telephone Conference Call).

*Contact Person:* Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 25, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–20186 Filed 8–29–08; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: GPRA Client Outcomes for the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930–0208)—Revision**

SAMHSA's Center for Substance Abuse Treatment (CSAT) is responsible for collecting data from discretionary services grants and contracts where client outcomes are to be assessed at three points (intake, discharge, and post-intake). SAMHSA's CSAT-funded projects are required to submit these data as a contingency of their award. The analysis of the data also will help determine whether the goal of reducing health and social costs of drug use to the public is being achieved.

The primary purpose of this data collection activity is to meet the reporting requirements of the Government Performance and Results Act (GPRA) by allowing SAMHSA to quantify the effects and accomplishments of SAMHSA's CSAT programs.

CSAT requests approval to increase the number of questions in the instrument due to the agency's need for additional information from its programs to satisfy reporting needs. The additional information needed is the following:

- *Co-Occurring Disorders Screening*—Over the years, CSAT has focused attention on co-occurring disorders and has established programs designed specifically for persons with both co-occurring disorders and substance abuse problems. CSAT wants to make sure that all clients are screened regardless of the types of program they enter in order to get the treatment they need. CSAT has not had a formal way of assessing whether all programs screen clients for co-occurring disorders and consequently, these disorders potentially go untreated. CSAT will be able to monitor if clients are screened and for those who screen positive, monitor their outcomes and activities per the NOMS.
- *Veteran Status*—Collection of these data will allow CSAT to identify the number of veterans served and the types of services they received. Identifying a client's veteran's status allows CSAT and the grantees to monitor these clients and explore whether special services or programs are needed to treat them for substance abuse and other related issues. Identification of veteran status will also allow coordination between SAMHSA and other Federal agencies in order to provide a full range of services to veterans. CSAT will also be able to monitor their outcomes and activities per the NOMS.
- *HIV Test Status*—SAMHSA is committed to addressing the twin epidemics of HIV and substance abuse; the agency has received funding to augment the HIV testing program and hopes to reduce the number of new cases. The goal is for at least 80 percent of the clients to be tested for HIV. The test results give clients and programs an important piece of information needed for their substance abuse treatment plans. With the testing information, CSAT will monitor the numbers of treatment clients who have been tested.

In addition, we will add a response option to an existing item:

- *Housing for College Students*—Housing stability is one of the NOMs and should be calculated as accurately as possible, particularly for programs that target college students such as Campus SBIRT. There currently is no way to distinguish the housing status of students living on campus from those housed elsewhere. This additional information can be captured by adding a new response option for the existing housing question.

CSAT requests approval to add a grant program to this data collection:

- CSAT will add the Access to Recovery (ATR) grant program to this data collection for the CSAT Government Performance and Results Act (GPRA) Client Outcome Measures for Discretionary Programs instrument. The Voucher Information Form (OMB 0930–0266, Expiration Date 5/31/11) and Voucher Transaction Form (OMB 0930–0266, Expiration Date 5/31/11) will remain under separate data collections. ATR requires the integration of evidence-based practices and a systematic federal scrutiny of outcomes through GPRA. The GPRA focuses on results or outcomes in evaluating the effectiveness of Federal activities and on measuring progress toward achieving national goals and objectives.

The estimated annual response burden for this data collection is provided in the table below:

ESTIMATES OF ANNUALIZED HOUR BURDEN [1]

| Center/form/respondent type | Number of respondents | Responses per respondent | Total responses | Hours per response | Total hour burden | Added burden proportion [2] | Total annual burden hours | Total hour cost/ respondent [3] |
|---|---|---|---|---|---|---|---|---|
| **CSAT GPRA Client Outcome Measures for Discretionary Programs** | | | | | | | | |
| Clients: | | | | | | | | |
| Adolescents | 3,900 | 4 | 15,600 | .35 | 5,460 | .37 | 2,020 | $10,403 |
| Adults | 81,333 | 3 | 243,999 | .35 | 85,400 | .37 | 31,598 | 162,730 |
| SBIRT [4] Screening Only | 150,618 | 1 | 150,618 | .13 | 19,580 | 0 | 0 | |
| SBIRT Brief Intervention | 27,679 | 3 | 83,037 | .20 | 16,607 | 0 | 0 | |
| SBIRT Brief Tx & Refer to Tx | 9,200 | 3 | 27,600 | .35 | 9,660 | .37 | 3,574 | 18,406 |
| SBIRT Client Subtotal | 187,497 | | 261,255 | | 45,847 | | 3,574 | 18,406 |
| Client Subtotal | 272,730 | | 520,854 | | 136,707 | | 37,192 | 191,539 |
| **SBIRT** | | | | | | | | |
| Data Extract by Grants: [5] | | | | | | | | |
| Adult Records | 400 grants | 70 × 3 | 210 | .18 | 38 | | 38 | 570 |
| Adolescent Records | 73 grants | 53 × 4 | 212 | .18 | 38 | | 38 | 570 |
| Screening Only | 7 grants | 21,517 × 1 | 21,517 | .07 | 1,506 | | 1,506 | 22,590 |
| Brief Intervention | 7 grants | 3,954 × 3 | 11,862 | .10 | 1,186 | | 1,186 | 17,790 |
| Brief Tx & Refer to Tx | 7 grants | 1,314 × 3 | 3,942 | .18 | 710 | | 710 | 10,650 |
| SBIRT Data Extract Sub-total. | 494 | | 37,743 | | | | 3,402 | 52,170 |
| Upload [6] | 5 grants | | 171,639 | ([8]) | 29 | | 29 | 435 |
| SBIRT Upload Subtotal | 5 grants | | 171,639 | | | | 29 | 435 |
| SBIRT Extract/Upload Subtotal | 499 | | 209,382 | | | | | |
| **ATR** | | | | | | | | |
| Data Extract: [4] | | | | | | | | |
| Adult Records | 53,333 | 3 | 160,000 | .16 | 25,600 | | 25,600 | 640,000 |
| ATR Data Extract Subtotal | 53,333 | | 160,000 | | | | 25,600 | 640,000 |
| Upload [7] | 24 grants | 3 | 160,000 | ([8]) | 27 | | 27 | 675 |
| ATR Upload Subtotal | 24 grants | | 160,000 | | | | 27 | 675 |
| ATR Extract/Upload Subtotal | 53,357 | | 320,000 | | | | 25,627 | 640,675 |
| Total | 273,229 | | 1,050,236 | | | | 45,530 | 883,680 |

**Notes:**

[1] This table represents the maximum additional burden if adult respondents, for the discretionary services programs including ATR, provide three sets of responses/data and if CSAT adolescent respondents provide four sets of responses/data.

[2] Added burden proportion is an adjustment reflecting customary and usual business practices programs engage in (e.g., they already collect the data items).

[3] Estimate based on $5.15 for program staff, $15 for IT staff, and $25 for more senior IT staff for ATR uploads.

[4] Screening, Brief Intervention, Treatment and Referral (SBIRT) grant program:

* 150,618 Screening Only (SO) respondents complete section A of the GPRA instrument, all of these items are asked during a customary and usual intake process resulting in zero burden; and

* 27,679 Brief Intervention (BI) respondents complete sections A & B of the GPRA instrument, all of these items are asked during a customary and usual intake process resulting in zero burden; and

* 9,200 Brief Treatment (BT) & Referral to Treatment (RT) respondents complete all sections of the GPRA instrument.

[5] Data Extract by Grants: Grant burden for capturing customary and usual data.

[6] Upload: 5 of the 7 SBIRT grants upload data; the other 2 grants conduct direct data entry.

[7] Upload: All 24 ATR grants upload data.

[8] 1 hour per 6,000 records.

The estimates in this table reflect the maximum annual burden for currently funded discretionary services programs. The number of clients/participants served in following years is estimated to be the same assuming level funding of the discretionary programs, resulting in the same annual burden estimate for those years.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: August 24, 2008.

**Elaine Parry,**

*Acting Director, Office of Program Services.*

[FR Doc. E8–20213 Filed 8–29–08; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Post-Contract Award Information

**AGENCY:** Office of the Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

**ACTION:** 60-Day Notice and request for comments: Extension without change of a currently approved collection, 1600–0003.

**SUMMARY:** The Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Office, will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (as amended), 44 U.S.C. Chapter 35). The Office of the Chief Procurement Officer is soliciting comments related to its request for extension of an existing information collection authority for

information collected from contractors during the post-contract award phase of public contract administration under Homeland Security Acquisition Regulation (HSAR).

**DATES:** Comments are encouraged and will be accepted until November 3, 2008. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Comments and questions about this Information Collection Request should be forwarded to the Acquisition Policy and Legislation Office, Attn: Patricia Corrigan for the Department of Homeland Security, Office of the Chief Procurement Officer, Room 3114, Washington, DC 20528.

**FOR FURTHER INFORMATION CONTACT:** Patricia Corrigan, 202–447–5430 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** The Department of Homeland Security (DHS), Office of the Chief Procurement Officer requests renewal of an existing OMB Control Number for information requested from contractors as part of post-contract award administration by DHS acquisition officials. The information requested is specific to each transaction and is required in order for DHS acquisition officials to properly assess contractor technical and management progress in meeting contractual requirements and otherwise performing in the Government's best interest. This notice provides a request for renewal of OMB Control Number 1600–0003 previously granted in August 2005.

The Office of Management and Budget is particularly interested in comments regarding:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 submissions of responses.

**Analysis**

*Agency:* Department of Homeland Security, Office of the Chief, Procurement Officer, Acquisition Policy and Legislation Office.

*Title:* Post-Contract Award Information.

*OMB Number:* 1600—0003.

*Frequency:* Once.

*Affected Public:* Individuals and businesses.

*Number of Respondents:* 4,061.

*Estimated Time per Respondent:* 14 hours.

*Total Burden Hours:* 170,562 annual burden hours.

*Total Burden Cost (capital/startup):* $0.00.

*Total Burden Cost (operating/maintaining):* $0.00.

**Richard Mangogna,**

*Chief Information Officer.*

[FR Doc. E8–20177 Filed 8–29–08; 8:45 am]

**BILLING CODE 4410–10–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

**[Docket No. TSA–2005–20118]**

### Intent To Request Renewal From OMB of One Current Public Collection of Information; Maryland Three Airports: Enhanced Security Procedures at Certain Airports in the Washington, DC, Area

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-Day Notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR) abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. This collection requires individuals to successfully complete a security threat assessment in order to operate an aircraft to or from one of the three Maryland airports that are located within the Washington, DC, Metropolitan Area Flight Restricted Zone (Maryland Three airports), or to serve as an airport security coordinator at one of these three airports.

**DATES:** Send your comments by November 3, 2008.

**ADDRESSES:** Comments may be mailed or delivered to Joanna Johnson, Office of Information Technology, TSA–11 Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

**FOR FURTHER INFORMATION CONTACT:** Joanna Johnson at the above address, or by telephone (571) 227–3651 or facsimile (571) 227–3588.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov*. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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.

**Information Collection Requirement**

*OMB control number 1652–0029; Maryland Three Airports: Enhanced Security Procedures at Certain Airports in the Washington, DC, Area, 49 CFR part 1562.* TSA published an interim final rule (IFR) on February 10, 2005 (70 FR 7150), that codified and transferred responsibility from the Federal Aviation Administration (FAA) to TSA for ground security requirements and procedures at three Maryland airports that are located within the Washington, DC, Metropolitan Area Flight Restricted Zone (Maryland Three Airports), and for individuals operating aircraft to or from these three airports. The Maryland Three airports are College Park Airport (CGS), Potomac Airfield (VKX), and Washington Executive/Hyde Field (W32). The information collected is used to determine compliance with 49 CFR part 1562.

Part 1562 allows an individual who is approved by TSA to operate an aircraft to or from one of the Maryland Three Airports, or to serve as an airport security coordinator in one of these

three airports. In order to be approved, an individual is required to successfully complete a security threat assessment. As part of this threat assessment, an individual (pilot or airport security coordinator) is required to undergo a criminal history records check and a check of Government terrorist watch lists and other databases to determine whether the individual poses, or is suspected of posing, a threat to transportation or national security. An individual will not receive TSA's approval under this analysis if TSA determines or suspects the individual of being a threat to national or transportation security. Prospective pilots must be fingerprinted at the Ronald Reagan Washington National Airport's (DCA) badging office with the airport security coordinator, as well as provide the following information to TSA as part of the application process: Full name, Social Security number, Airmen Certificate number, date of birth, home address, home and work phone numbers, e-mail address, emergency contact number, aircraft make and model, and FAA registration number. The current estimated annual reporting burden is 8,299 hours.

Issued in Arlington, Virginia, on August 26, 2008.

**John Manning,**

*Acting Director, Business Management Office, Office of Information Technology.*

[FR Doc. E8–20207 Filed 8–29–08; 8:45 am]

BILLING CODE 9110–05–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 16, 2008.

Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 17, 2008.

**J. Paul Loether,**

*Chief, National Register of Historic Places/National Historic Landmarks Program.*

**ALASKA**

**Southeast Fairbanks Borough-Census Area**

Swan Point Archaeological Site, Address Restricted, Big Delta, 08000929

**ARKANSAS**

**Carroll County**

Old U.S. 62, Busch Segment, (Arkansas Highway History and Architecture MPS), Carroll Co. Rds. 107, 109 and 173, Busch, 08000942

**Clay County**

Sink-Crumb Post No. 72 American Legion Hut, NE., corner of 2nd and Cherry Sts., Knobel, 08000934

**Pulaski County**

Block Realty-Baker House, 1900 Beechwood, Little Rock, 08000935

**Scott County**

Waldron Commercial Historic District, S. Main St. between 1st and 5th Sts., Washington St. between 2nd and 3rd Sts., Waldron, 08000943

**Sebastian County**

Old Huntington Jail, 223 East Broadway St., Huntington, 08000944

**Washington County**

Highway B–29 Bridge, (Historic Bridges of Arkansas MPS), Co. Rd. 623 over the Illinois River, Prairie Grove, 08000945

**Woodruff County**

Cotton Plant Commercial Historic District, Main St. roughly between Pine and Ash Sts., Cotton Plant, 08000946

**CONNECTICUT**

**Fairfield County**

Noyes House, Address Restricted, New Canaan, 08000948

**GUAM**

**Guam County**

Aga Tongan Archaeological Site, Address Restricted, Inarajan, 08000941

**ILLINOIS**

**Cook County**

Vassar Swiss Underwear Company Building, 2545 W. Diversey Ave., Chicago, 08000923

**MASSACHUSETTS**

**Hampshire County**

West Chesterfield Historic District, 1–70 Ireland St. and unnumbered lots, 620–669 Main Rd., section of Cummington Rd., Chesterfield, 08000950

**NEW YORK**

**Cortland County**

Truxton Depot, Railroad St., Truxton, 08000930

**Nassau County**

House at 226 West Penn Street, 226 West Penn St., Long Beach, 08000932

St. Paul's German Presbyterian Church and Cemetery, 525 Elmont Rd., Elmont, 08000931

**New York County**

St. Philip's Church, 210–216 West 134th St., New York, 08000933

**NORTH CAROLINA**

**Mecklenburg County**

Morning Star Lutheran Church, 12900 Idlewild Rd., Matthews, 08000938

**Wake County**

Curtis, William A., House, 1415 Poole Rd., Raleigh, 08000939

Lawrence, Calvin Wray, House, (Wake County MPS) 8528 Ragan Rd., Apex, 08000937

**OREGON**

**Multnomah County**

USS BLUEBACK (submarine), 1495 Water Ave., located on the E. bank of the Wilamette River, Portland, 08000947

**PUERTO RICO**

**Caguas Municipality**

Primera Iglesia Bautista de Caguas, Corner of Ruiz Belvis and Intendenta Ramirez St., Caguas, 08000949

**Juana Diaz Municipality**

Cueva Lucero, (Prehistoric Rock Art of Puerto Rico MPS) Guayabal Ward, Juana Diaz, 08000936

**VIRGINIA**

**Hampton Independent City**

Pasture Point Historic District, Bounded by Hampton River on the E., Bright's Creek on the N., Wine St. on the W., and Syms St. on the S., Hampton, 08000940

**WEST VIRGINIA**

**Berkeley County**

Good, William, House and Cellar, 1616 Dry Run Rd., Martinsburg, 08000925

Mt. Pleasant School, Abiding Way, Gerrardstown, 08000928

Schlack, George, House, 212 Speck's Run Rd., Ridgeway, 08000927

Thornburgh-Chenoweth-Pitzer House and Farm, 10930 Apple Harvest Drive, Arden, 08000926

**Fayette County**

Winebrenner's Crossroads Historic District, Golf Course Rd. at VanClevesville Rd. and Winebrenner Rd., Martinsburg, 08000924

[FR Doc. E8–20201 Filed 8–29–08; 8:45 am]

BILLING CODE 4310–70–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1020 (Review)]**

### Barium Carbonate From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a five-year review concerning the antidumping duty order on barium carbonate from China.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on barium carbonate from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is October 22, 2008. Comments on the adequacy of responses may be filed with the Commission by November 18, 2008. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* September 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 08–5–188, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

**SUPPLEMENTARY INFORMATION:**

*Background.* On October 1, 2003, the Department of Commerce issued an antidumping duty order on imports of barium carbonate from China (68 FR 56619). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.* The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as all barium carbonate.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of barium carbonate.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is October 1, 2003.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.* Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official recently has advised that a five-year review is no longer considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are no longer required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.* Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.* Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the

Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.* Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 22, 2008. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is November 18, 2008. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.* Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information to be provided in response to this Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since the Order Date.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in

the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: August 25, 2008.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–20226 Filed 8–29–08; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–452 and 731–TA–1129–1130 (Final)]**

## Raw Flexible Magnets From China and Taiwan

### Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China of raw flexible magnets, provided for in subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China.[2] The Commission further determines, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is threatened with material injury by reason of imports from China and Taiwan of raw flexible magnets that have been found by Commerce to be sold in the United States at less than fair value (LTFV).[3] [4] In addition, the Commission determines that it would not have found material injury but for the suspension of liquidation.

### Background

The Commission instituted these investigations effective September 21, 2007, following receipt of a petition filed with the Commission and Commerce by Magnum Magnetics Corp., Marietta, OH. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of raw flexible magnets from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)), and that imports of raw flexible magnets from China and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 8, 2008 (73 FR 26145). The hearing was held in Washington, DC, on July 10, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 25, 2008. The views of the Commission are contained in USITC Publication 4030 (August 2008), *entitled Raw Flexible Magnets from China and Taiwan: Investigations No. 701–TA–452 and 731–TA–1129–1130 (Final).*

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Charlotte R. Lane determines that an industry in the United States is materially injured by reason of such imports.

[3] Commissioner Charlotte R. Lane determines that an industry in the United States is materially injured by reason of such imports.

[4] Vice Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of such imports from Taiwan.

Issued: August 25, 2008.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–20227 Filed 8–29–08; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection, Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Mass Layoff Statistics Program.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individuals listed below in the Addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the Addresses section of this notice on or before November 3, 2008.

**ADDRESSES:** Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

**FOR FURTHER INFORMATION CONTACT:** Carol Rowan, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 309(2)(15)(a)(1)(A)(iii) of the Workforce Investment Act (WIA) states that the Secretary of Labor shall oversee development, maintenance, and continuous improvements of the program to measure the incidence of, industrial and geographical location of,

and number of workers displaced by, permanent layoffs and plant closings. Prior to the WIA, Section 462(e) of Public Law 97–300, the Job Training Partnership Act (JTPA), provided that the Secretary of Labor develop and maintain statistical data relating to permanent mass layoffs and plant closings and issue an annual report. The report includes, at a minimum, the number of plant closings and mass layoffs, and the number of workers affected. The data are summarized by geographic area and industry.

The Mass Layoff Statistics (MLS) program uses a standardized, automated approach to identify, describe, and track the impact of major job cutbacks. The program utilizes, to the greatest degree possible, existing Unemployment Insurance (UI) records and computerized data files, supplemented by direct employer contact. Its major features include:

- The identification of major layoffs and closings through initial UI claims filed against the identified employer;
- The use of existing files on claimants to obtain basic demographic and economic characteristics on the individual;
- The telephone contact of those employers meeting mass layoff criteria to obtain specific information on the nature of the layoff and characteristics of the establishment;
- The identification of the continuing impact of the mass layoff on individuals by matching affected initial claimants with persons in claims status;
- The measurement of the incidence of the exhaustion of regular state UI benefits by affected workers;
- The identification and quantifying the effects that extended mass layoffs have on the movement of work; and,
- The identification of business functions within establishments which are affected by mass layoffs.

In the program, State Workforce Agencies (SWAs) submit one report each quarter and a preliminary, summary report each month. These computerized reports contain information from State administrative files and information obtained from those employers meeting the program criteria of a mass layoff.

Congress provided for the implementation of the MLS program by the Bureau of Labor Statistics (BLS) through the Fiscal Years 1984–1992 appropriations for the Departments of Labor, Health and Human Services, Education, and related agencies. The program was not operational in Fiscal Years 1993 and 1994. Program operation resumed in Fiscal Year 1995 with funds provided by the Employment and Training Administration (ETA). Beginning in fiscal year 2004, funding for the MLS program became part of the Bureau of Labor Statistics permanent budget. Also in 2004, the scope of the MLS program was redefined to cover only the private nonfarm economy for extended mass layoffs due to budget constraints.

At the present time, all states, the District of Columbia, Puerto Rico, and the Virgin Islands are participating in the program.

## II. Current Action

Office of Management and Budget clearance is being sought for the Mass Layoff Statistics (MLS) Program.

In addition to the BLS uses of MLS data, such data are used by Congress, the Executive Branch, the business, labor, and academic communities, SWAs, and the U.S. Department of Labor for both macro- and microeconomic analysis, including specific labor market studies geared towards manpower assistance and development. Congress used these data in conjunction with the findings from a supplemental study of layoff actions in the development of the Worker Adjustment and Retraining Notification (WARN) Act, which was enacted in August 1988.

A Congressionally mandated use of mass layoff data includes the WIA, which replaces Title III of the JTPA. Section 133 of the WIA encourages the use of MLS data in substate allocations relating to dislocated worker employment and training activities.

State agencies use the MLS data in various ways, including the identification of geographic areas in need of special manpower services; ailing or troubled industries; specific employers needing assistance; outreach activities for the unemployed; and workers in need of temporary health care services.

There is no other comprehensive source of statistics on either establishments or workers affected by mass layoffs and plant closings; therefore, none of the aforementioned data requirements could be fulfilled if this data collection did not occur.

## III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- 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.
- 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.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Bureau of Labor Statistics.

*Title:* Mass Layoff Statistics Program.

*OMB Number:* 1220–0090.

*Affected Public:* Private Sector; State, Local, or Tribal Governments.

| | Total respondents | Frequency | Total Responses | Average time per response | Estimated total burden (hours) |
|---|---|---|---|---|---|
| Employers | 14000 | On Occasion | 14000 | 10 Minutes | 2333 |
| States | 53 | Monthly, Quarterly | 848 | 76.51 Hours | 64880 |
| TOTAL | | | 14848 | | 67213 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 26th day of August 2008.

**Cathy Kazanowski,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. E8–20248 Filed 8–29–08; 8:45 am]

BILLING CODE 4510–24–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (08–056)]**

### NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

**DATES:** Wednesday, September 24, 2008, 9 a.m. to 5 p.m., Thursday, September 25, 2008, 8:30 a.m. to 5 p.m., and Friday, September 26, 2008, 8:30 a.m. to 1 p.m.

**ADDRESSES:** NASA Headquarters, 300 E Street, SW., Room 6H46, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Heliophysics Division Overview and Program Status
—2009 Heliophysics Roadmap
—Multidisciplinary Science—Interdisciplinary Science—System Science
—Instrument Development Program
—Explorer Program

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information no less than 5 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: August 26, 2008.

**Katherine M. Dakon,**

*Acting Director, Advisory Committee Management Division, National Aeronautics and Space Administration.*

[FR Doc. E8–20214 Filed 8–29–08; 8:45 am]

BILLING CODE 7510–13–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 2, 2008. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292–7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:*

**Permit Application No. 2009–013 Robert Pittman, NOAA/NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037, College Station, TX 77843–1112.**

*Activity for Which Permit Is Requested:* Take and Import into the U.S.A. The applicant's study of movement patterns, diet preferences and genetics of whales calls for the collection of pencil eraser size tissue samples from up to 200 Killer whales (*Orcinus orca*), 25 Minke whales (*Balaenoptera bonaerensis*), and 25 Humpback whales (*Megaptera novaeangliae*). The tissue samples will be used in food habit studies (stable isotope and fatty acids). Additionally the same samples will be used to analyze for genetic distinctness of the different killer whale types in Antarctica using genetics techniques. For movement patterns, a small (ca 40g) satellite tags will be attached to some of the whales. The samples collected will be imported to the U.S. for research studies at the Southwest Fisheries Science Center.

*Location:* Antarctic Peninsula area and McMurdo Sound region, Antarctica.

*Dates:* December 25, 2008 to December 31, 2013.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. E8–20242 Filed 8–29–08; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–143]**

### Nuclear Fuel Services, Inc., Environmental Assessment and Finding of No Significant Impact Related to Proposed License Amendment Authorizing the Processing of Uranium Hexafluoride in a New Process Line

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant impact.

**FOR FURTHER INFORMATION CONTACT:** Kevin M. Ramsey, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop E–2C40M, Washington, DC 20555–0001, telephone (301) 492–3123 and e-mail *kevin.ramsey@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The Nuclear Regulatory Commission (NRC) staff is considering the issuance of a license amendment to Materials License SNM–124, issued to Nuclear Fuel Services, Inc. (the licensee), to authorize the processing of uranium hexafluoride (UF6) in a new processing line (the CD Line). The NRC has prepared an Environmental Assessment (EA) in support of this proposed action. Based upon the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate and, therefore, an Environmental Impact Statement (EIS) will not be prepared.

## II. Environmental Assessment

### *Background*

The Nuclear Fuel Services (NFS) facility in Erwin, Tennessee, is authorized under License SNM–124 to manufacture high-enriched nuclear reactor fuel. In addition, NFS is authorized to blend HEU with natural uranium and manufacture low-enriched nuclear reactor fuel. License SNM–124 already authorizes NFS to conduct operations with uranium in the form of UF6. On August 31, 2007, NFS requested a license amendment to process UF6 in the CD Line. A redacted version of the request was submitted on October 31, 2007 (Ref. 5). In response to a request for additional information (RAI), NFS submitted a reply to RAI questions on June 19, 2008. A redacted version of the reply was submitted on June 25, 2008 (Ref. 6).

### *Review Scope*

The purpose of this EA is to assess the environmental impacts of the proposed action. The safety aspects of the proposed action are being evaluated separately and this EA does not approve the request. This EA is limited to the proposed operation of the CD Line and any cumulative impacts would have on existing plant operations. The existing conditions and operations for the Erwin facility were evaluated by the NRC for environmental impacts in a 1999 EA related to the renewal of the NFS license (Ref. 1) and a 2002 EA related to the first amendment for the Blended Low-Enriched Uranium (BLEU) Project (Ref. 2). The 2002 EA assessed the impact of the entire BLEU Project using information available at that time. A 2003 EA (Ref. 3) and a 2004 EA (Ref. 4) related to additional BLEU Project amendments, confirmed the FONSI issued in 2002. This assessment presents information and analysis for determining that issuance of a FONSI is appropriate, and that preparation of an EIS is not warranted.

### *Proposed Action*

The proposed action is to amend NRC Materials License SNM–124 to authorize the processing of UF6 in the new CD Line (Ref. 5). The CD Line will be assembled and operated in an existing building. No construction of new buildings is requested.

### *Need for Proposed Action*

The proposed action is being requested because the production of high-enriched uranium (HEU) at the Portsmouth Gaseous Diffusion Plant was stopped in 1991 and the uranium being used there was placed in storage. The stored uranium included numerous sample bottles of high-enriched uranium in the form of UF6. Long-term storage of uranium in the form of UF6 is undesirable because it is a reactive chemical that can form hydrofluoric acid (HF) if exposed to air. HF is extremely hazardous. In 1999, NFS was subcontracted to receive and store these sample bottles. Similar materials from other U.S. Department of Energy (DOE) sites were included in the scope of the contract. The proposed action is for NFS to convert the uranium fluoride compounds into more stable compounds (oxides or nitrates). The new high-enriched compounds will either be returned to DOE, or declared surplus and transferred to NFS for down-blending and use as commercial reactor fuel.

### *Alternatives*

The alternatives evaluated are:

1. Approve the license amendment as described; or
2. No action (i.e., deny the request).

### *Affected Environment*

The affected environment is the NFS site, and is identical to the affected environment assessed in the 2002 EA related to the first amendment for the BLEU Project (Ref. 2). A full description of the site and its characteristics is given in the 2002 EA. Additional information can be found in the 1999 EA related to the renewal of the NFS license (Ref. 1). The NFS facility is located in Unicoi County, Tennessee, about 32 km (20 mi) southwest of Johnson City, Tennessee. The plant is about 0.8 km (0.5 mi) southwest of the Erwin city limits. The site occupies about 28 hectares (70 acres). The site is bounded to the northwest by the CSX Corporation (CSX) railroad property and the Nolichucky River, and by Martin Creek to the northeast. The plant elevation is about 9 m (30 ft) above the nearest point on the Nolichucky River.

The area adjacent to the site consists primarily of residential, industrial, and commercial areas, with a limited amount of farming to the northwest. Privately owned residences are located to the east and south of the facility. Tract size is relatively large, leading to a low housing density in the areas adjacent to the facility. The CSX railroad right-of-way is parallel to the western boundary of the site. Industrial development is located adjacent to the railroad on the opposite side of the right-of-way. The site is bounded by Martin Creek to the north, with privately owned, vacant property and low-density residences.

### *Effluent Releases and Monitoring*

A full description of the effluent monitoring program at the site is provided in a 2002 EA related to the first amendment for the BLEU Project (Ref. 2). Additional information is available in the 1999 EA related to the renewal of the NFS license (Ref. 1). The NFS Erwin Plant conducts effluent and environmental monitoring programs to evaluate potential public health impacts and comply with the NRC effluent and environmental monitoring requirements. The effluent program monitors the airborne, liquid, and solid waste streams produced during operation of the NFS Plant. The environmental program monitors the air, surface water, sediment, soil, groundwater, and vegetation in and around the NFS Plant.

Airborne, liquid, and solid effluent streams that contain radioactive material are generated at the NFS Plant and monitored to ensure compliance with NRC regulations in Title 10 of the Code of Federal Regulations (10 CFR), Part 20. Each effluent is monitored at or just before the point of release. The results of effluent monitoring are reported on a semi-annual basis to the NRC in accordance with 10 CFR 70.59.

Airborne and liquid effluents are also monitored for non-radiological constituents in accordance with State discharge permits. For the purpose of this EA, the State of Tennessee is

expected to set limits on effluents under its regulatory control that are protective of health and safety and the local environment.

*Impacts of Proposed Action*

1. Normal Operations

The proposed action is limited to the processing of uranium fluoride compounds in the new CD Line. The new processing line is being assembled in an existing building. No construction of new buildings is proposed. The process will remove uranium fluoride compounds from sample bottles and convert the compounds into either uranium oxide or uranyl nitrate. The processes are small scale and will be conducted inside glove boxes. The glove boxes are designed to contain any leakage of chemicals from the process equipment. Based on the information provided by NFS, the safety controls to be employed for the proposed action appear to be sufficient to ensure that planned operations will have no significant impact on the environment.

*Radiological Impacts:* The proposed action involves the conversion of uranium fluoride compounds into either uranium oxide or uranyl nitrate. The uranium fluoride compounds are volatile and will be heated to a gaseous state for removal from the sample bottles and processing. A new high-efficiency gaseous effluent treatment system is being installed with the new processing line. The combination of processing small quantities and a new effluent treatment system is expected to result in a very small contribution to the airborne effluents from all plant operations. No significant increase is expected in effluent air emissions discharged through stacks at the site. In addition, no increase is expected in liquid effluents discharged to the sanitary sewer. Therefore, the proposed action will have no impact on the total annual dose estimate for the maximally exposed individual from all planned effluents. The dose to workers may increase slightly from operation of the new processing line. However, occupational dose is monitored and controlled in accordance with applicable NRC regulations; therefore, no adverse impacts are expected. Surface water quality at the NFS site is currently protected by enforcing release limits and monitoring programs. No change in surface water impacts is expected. The proposed action will not discharge any effluents to the groundwater; therefore, no adverse impacts to groundwater are expected.

The proposed action involves transportation of processed radioactive material from the NFS site to DOE facilities and transportation of waste material from the NFS site. All transportation will be conducted in accordance with the applicable NRC and U.S. Department of Transportation regulations; therefore, no adverse impacts from transportation activities are expected.

*Land Use:* The proposed action involves operations in existing facilities. No new facilities will be constructed; therefore, no adverse impact to land use is expected.

*Cultural Resources:* The proposed action involves operations in existing facilities. The NRC staff considers this a type of activity that does not have the potential to affect historic properties. No adverse impact to cultural resources is expected.

*Biotic Resources:* The proposed action will not change current land use or cause a significant increase in effluents at the site. Therefore, the NRC finds the proposed action will not affect any Federally endangered or threatened species.

2. Potential Accidents

The proposed action will result in a new processing line with new accident sequences. NFS conducted an Integrated Safety Analysis (ISA) of the new processing line and submitted an ISA Summary for NRC review and approval. The ISA Summary identifies all potential accidents that have significant consequences and the safety controls designated by NFS to prevent or mitigate those consequences. The following types of accidents were identified:

○ Criticality accidents—Enriched uranium accumulating in critical mass quantities under conditions favorable to an uncontrolled chain reaction.

○ Chemical accidents—Hydrofluoric acid spills and releases of argon, carbon dioxide and nitrogen.

○ Radiological accidents—Exposure and intake of uranium compounds.

○ Fire accidents—Ignition of combustible material in and around the processing line.

○ Environmental accidents—Spill of hydrofluoric acid.

All environmental accident scenarios were found to have low consequences. This can be attributed to the relatively small quantities of material being processed and the containment of all processes in glove boxes. Intermediate and high consequences to workers are possible and NFS has designated items relied on for safety to make those accidents unlikely.

3. Cumulative Impacts

NRC has considered the impacts of the proposed action together with the known impacts of the existing facility. After reviewing the information provided, the NRC concludes that the cumulative impacts represent an insignificant change to the existing conditions in the area surrounding the NFS site.

*Impacts of No Action Alternative*

Under the no action alternative, NFS would not be able to process the uranium fluoride compounds for DOE. This would require NFS to ship the sample bottles with the volatile uranium fluoride compounds back to DOE or to another processing facility. The need to convert the compounds to a more stable form suitable for storage or re-use would remain. Failure to fulfill its role in government and commercial programs could cause these customers to select other alternatives that may be less cost effective and incur greater environmental impacts. Because impacts of the no action alternative would likely be the same as, or greater than, the proposed action, the no action alternative is not further considered.

*Conclusion*

Based on its review, the NRC has concluded that the environmental impacts associated with the proposed action are not significant and, therefore, do not warrant preparation of an EIS. The NRC has determined that the proposed action, approval of the license amendment as described, is the preferred alternative.

*Agencies and Persons Contacted*

On July 10, 2008, the NRC staff forwarded a draft of this EA to the Deputy Director of the Division of Radiological Health in the Tennessee Department of Environment and Conservation (TDEC). On August 8, 2008, the Deputy Director responded that TDEC had reviewed the draft EA and had no comments (Ref. 7).

The NRC staff has determined that the proposed action will not affect listed species or critical habitat. Therefore, no consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff has determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

*References*

1. U.S. Nuclear Regulatory Commission, ''Environmental Assessment for Renewal of

Special Nuclear Material License No. SNM–124,'' January 1999, ADAMS no. ML031150418.

2. U.S. Nuclear Regulatory Commission, ''Environmental Assessment for Proposed License Amendments to Special Nuclear Material License No. SNM–124 Regarding Downblending and Oxide Conversion of Surplus High-Enriched Uranium,'' June 2002, ADAMS no. ML021790068.

3. U.S. Nuclear Regulatory Commission, ''Environmental Assessment and Finding of No Significant Impact for the BLEU Preparation Facility,'' September 2003, ADAMS no. ML032390428.

4. U.S. Nuclear Regulatory Commission, ''Environmental Assessment and Finding of No Significant Impact for the Oxide Conversion Building and the Effluent Processing Building at the BLEU Complex,'' June 2004, ADAMS no. ML041470176.

5. Nuclear Fuel Services, ''Redacted Version of Amendment Request for Processing UF6 in the CD Line Facility at the NFS Site,'' October 31, 2007, ADAMS no. ML073090651.

6. Nuclear Fuel Services, ''Redacted Version of Reply to RAI Concerning NFS' CD Line Facility,'' June 25, 2008, ADAMS no. ML081790147.

7. Tennessee Division of Radiological Health, ''Consultation with Tennessee re: Environmental Assessment for Nuclear Fuel Services CD Line,'' August 8, 2008, ADAMS no. ML082240610.

### III. Finding of No Significant Impact

Pursuant to 10 CFR Part 51, the NRC staff has considered the environmental consequences of taking the proposed action. On the basis of this assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant, and the Commission is making a finding of no significant impact. Accordingly, the preparation of an EIS is not warranted.

### IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the references above. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 15th day of August 2008.

For the Nuclear Regulatory Commission.

**Kevin M. Ramsey,**

*Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E8–20232 Filed 8–29–08; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, October 16, 2008
Thursday, November 13, 2008
Thursday, December 11, 2008

The meetings will start at 10 a.m. and will be held in Room 5A06A, U.S. Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the U.S. Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the U.S. Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at U.S. Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5526, 1900 E Street, NW., Washington, DC 20415, (202) 606–2838.

Dated: August 27, 2008.

**Charles E. Brooks,**

*Chairman, Federal Prevailing Rate Advisory Committee.*

[FR Doc. E8–20266 Filed 8–29–08; 8:45 am]

**BILLING CODE 6325–49–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IA–2772; File No. 803–192]**

### Woodcock Financial Management Company, LLC; Notice of Application

August 26, 2008.

**AGENCY:** Securities and Exchange Commission (''SEC'' or ''Commission'').

**ACTION:** Notice of Application for Exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

*Applicant:* Woodcock Financial Management Company, LLC (''Applicant'').

*Relevant Advisers Act Sections:* Exemption requested under section 202(a)(11)(G) from section 202(a)(11) of the Advisers Act.

*Summary of Application:* Applicant requests that the Commission issue an order declaring it and its officers and employees acting within the scope of their employment (''Applicant Employees'') not to be persons within the intent of section 202(a)(11) of the Advisers Act, which defines the term ''investment adviser.''

*Filing Dates:* The application was filed on February 7, 2006 and amended

and restated applications were filed on August 8, 2008 and August 25, 2008.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 23, 2008 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicant, Woodcock Financial Management Company, LLC, 10 Rockefeller Plaza, Suite 609, New York, New York 10020.

**FOR FURTHER INFORMATION CONTACT:** Sarah G. ten Siethoff, Attorney Adviser, or Daniel S. Kahl, Branch Chief, at (202) 551–6787 (Office of Investment Adviser Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850)).

## Applicant's Representations

1. Applicant, a Delaware limited liability company, is a small, limited service ''family office'' that manages investments and performs incidental services exclusively for Polly and John Guth, their lineal descendants (including adopted children), Polly's children from a former marriage and their lineal descendants, and the spouses of such children and descendents (collectively, the ''Family''). The Applicant also provides advisory services to trusts created exclusively for the benefit of Family members and to limited liability companies, private foundations and other entities all owned exclusively by the Family (or, in the case of private foundations, solely funded by the Family) and operated exclusively for the benefit of the Family and/or charitable organizations (the ''Related Entities'' and, together with the members of the Family, the ''Family Clients''). Applicant is owned in equal shares by Polly Guth and John Guth.

2. Applicant (i) Provides investment management services to Family Clients, (ii) assists Family Clients with cash management, record-keeping and tax planning and (iii) engages third-party service providers to perform ''back office'' services for Family Clients. Applicant's investment management services consist of (i) Providing discretionary asset management services to Family Clients, for example, by placing orders through broker-dealers for the purchase and sale of securities on public markets and making direct private equity investments, (ii) evaluating the performance and strategies of third-party investment managers, (iii) selecting those managers that it determines to be appropriate for Family Clients, (iv) engaging managers on behalf of Family Clients or recommending managers to Family Clients (depending on whether Applicant has discretionary authority with respect to the particular accounts involved) and (v) monitoring the performance of managers and making disposition decisions or recommendations. From time to time, Applicant engages a third-party consultant to review and recommend outside managers.

3. Applicant is paid a fee by the Family Clients. Overall fees have historically been set at a level that allows Applicant to recover its direct and overhead expenses without generating a profit. In the future, Applicant will continue its policy of recovering expenses without intending to generate a profit.

4. Applicant represents that it does not hold itself out to the public as an investment adviser. Applicant represents that it is not listed in the telephone book, any other directory or Web site as an investment adviser. Applicant does not engage in any advertising, attend any investment management-related conferences as a vendor, or conduct any marketing activities.

5. Applicant represents that it has no, and in the future will not have any, clients other than Family Clients. Applicant represents that it has never solicited, and will not solicit clients other than Family Clients. Applicant further represents that its sole purpose is to serve as a ''family office'' for the Family.

## Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities * * *.'' Section 202(a)(11)(G) of the Advisers Act authorizes the SEC to exclude from the definition of ''investment adviser'' persons that are not within the intent of section 202(a)(11) of the Advisers Act.

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement.

3. Applicant asserts that it does not qualify for any of the exemptions provided by section 203(b). Applicant also asserts that it is not prohibited from registering with the SEC under section 203A(a) because it has assets under management of not less than $25,000,000.

4. Applicant requests that the SEC declare Applicant and Applicant Employees not to be persons within the intent of section 202(a)(11). Applicant requests that the Commission's order include Applicant Employees because, if an Order was issued with respect to Applicant only, its officers and employees would not be ''associated persons'' of a registered investment adviser, and therefore might themselves be required to register as investment advisers. Applicant states that there is no public interest in requiring it or Applicant Employees to be registered under the Advisers Act because Applicant offers investment advisory services only to Family Clients. Applicant states that it is a private organization that was formed to be the ''family office'' for the Family and that will continue to be its sole purpose.

## Applicant's Conditions

Applicant agrees that the requested relief will be subject to the following conditions:

1. Applicant will offer and provide investment advisory services only to Family Clients and will not hold itself out to the public as an investment adviser.

2. If Applicant creates a board of directors or its equivalent, members of the Family will comprise at least a majority of such board of directors or its equivalent.

3. Applicant will at all times be owned, directly or indirectly, exclusively by one or more members of the Family.

4. At all times all Related Entities that are exempt from registration as an

investment company under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940 (the ''1940 Act'') will continue to be exempt from such registration. At all times no Related Entity will be required to register as an investment company under the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–20247 Filed 8–29–08; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58414; File No. SR–CBOE–2008–87]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Foreign Members

August 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 20, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

CBOE proposes to adopt a new rule regarding foreign members in place of its current rule regarding qualifications of foreign member organizations. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to adopt a new rule regarding foreign members in place of CBOE's current rule regarding qualifications of foreign member organizations. CBOE's current rule regarding qualifications of foreign member organizations is set forth in CBOE Rule 3.4. The new rule regarding foreign members is proposed to be included in Rule 3.4 in place of the current provisions of that Rule.

Under the new rule, a CBOE member[2] that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Securities and Exchange Commission (''Commission'') and the Exchange would be required to: (i) Prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars; (ii) reimburse the Exchange for any expense incurred in connection with examination of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States; and (iii) ensure the availability of an individual fluent in English knowledgeable in securities and financial matters to assist the representatives of the Exchange during examinations.

The foregoing requirements would take the place of the current provisions of Rule 3.4 relating to qualifications of foreign member organizations.[3] The Exchange believes that it has and will continue to have adequate regulatory jurisdiction over foreign members by virtue of the CBOE rule provisions that are generally applicable to all CBOE members and does not believe that the existing additional requirements in Rule 3.4 for foreign member organizations are necessary for the effective regulation of those organizations.

For example, each CBOE member organization is required under CBOE Rule 3.7(e) to execute a consent to jurisdiction pledging to abide by the Constitution and Rules of the Exchange, as from time to time amended, and by all circulars, notices, directives, or decisions adopted pursuant to or made in accordance with the Constitution and Rules. Similarly, direct owners and executive officers of each member organization are also required pursuant

[1] 15 U.S.C. 78s(b)(1).

[2] Under Section 1.1(b) of the CBOE Constitution, the term ''member'' includes both an individual member and a member organization.

[3] Current Rule 3.4 provides that an organization that is not organized under the laws of one of the states of the United States must satisfy the following requirements in order to be a member organization: (i) The organization must be a corporation or partnership organized under the laws of a country other than the United States with respect to which an information sharing agreement, memorandum of understanding, or treaty is in effect that provides the Commission with access to information concerning securities trading activity in that country; (ii) the organization must disclose to the Exchange all persons associated with the organization and all parents of the organization, through all tiers of ownership, until the ultimate individual beneficial owners of the organization are disclosed; (iii) the organization must maintain in English and at a location in the United States (A) the books and records of the organization that relate to its business on the Exchange, including, but not limited to, any trading records relating to trading activity on the Exchange and (B) any other books and records of the organization that an organization registered as a broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934 (''Act'') (15 U.S.C. 78o) is required to maintain at a location in the United States; (iv) the organization must maintain its financial records in accordance with United States accounting standards; (v) the organization must agree to permit inspections by the Exchange and the Commission of the foreign operations of the organization related to its securities business; (vi) the organization must waive any applicable secrecy laws and be exempted from any applicable blocking statutes in the domiciliary jurisdiction of the organization; (vii) the organization must provide to the Exchange an opinion of legal counsel of the domiciliary jurisdiction of the organization which certifies that (A) there are no applicable secrecy laws or blocking statutes in that jurisdiction or (B) that the organization has effectively waived any applicable secrecy laws or is exempted from any applicable blocking statutes in that jurisdiction; (viii) any customer of the organization that utilizes the organization to execute orders on the Exchange must have waived any applicable secrecy laws and be exempted from any applicable blocking statutes in the domiciliary jurisdiction of the organization; (ix) the organization must agree to submit to the jurisdiction of the federal courts of the United States and the courts of Illinois and to irrevocably waive, to the fullest extent permitted by law, any objection which the organization may have based on venue or forum non conveniens with respect to any action initiated in such courts; (x) the organization must appoint a process agent in Illinois to receive, on the behalf of the organization, process which may be served in any legal action or proceeding; (xi) the organization must own its Exchange membership(s); (xii) the organization must be registered as a broker or dealer pursuant to Section 15 of the Act (15 U.S.C. 78o); (xiii) the organization must satisfy the foregoing requirements in a manner and form prescribed by the Exchange and must satisfy such additional requirements that the Exchange reasonably deems appropriate; and (xiv) the organization must meet the other qualification requirements for membership under the Constitution and Rules (except that a foreign member organization that is approved to act solely as a lessor is not required to comply with items (iii)(B) and (xii) above).

to CBOE Rules 3.6(b) and 3.7(e) to execute such a consent to jurisdiction.

In addition, CBOE Rule 3.6(a) subjects all associated persons of a member organization to the Constitution and Rules of the Exchange. Rule 3.6(a) also requires associated persons to provide information to the Exchange with respect to their relationship and dealings with their associated member organization and securities business and to permit the Exchange to examine their books and records in this regard.

The authority of the Exchange over member organizations and their associated persons is further enlarged by CBOE Rule 17.1, which subjects members and associated persons to the disciplinary jurisdiction of the Exchange. Specifically, pursuant to Rule 17.1, any member organization or person associated with a member organization that is alleged to have violated or aided and abetted a violation of any provision of the Act,[4] the rules and regulations promulgated thereunder, any constitutional provision, bylaw, or rule of the Exchange, or any interpretation thereof or resolution of the CBOE Board of Directors regulating the conduct of business on the Exchange is subject to the disciplinary jurisdiction of the Exchange.

Additionally, if there are issues of concern with respect to a particular foreign applicant for Exchange membership, the Exchange has broad authority in granting or denying Exchange membership and association with an Exchange member. In particular, under CBOE Rule 3.5(b), the Exchange may deny (or may condition) membership or may prevent a person from becoming associated (or may condition an association) with a member for the same reasons that the Commission may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act.[5] The Exchange may also deny or condition membership or association for various reasons under CBOE Rule 3.5(c), including, among other reasons, if the applicant is unable to satisfactorily demonstrate a capacity to adhere to all applicable Exchange, Commission, Options Clearing Corporation, and Federal Reserve Board policies, rules, and regulations, including those concerning record-keeping, reporting, finance, and trading procedures.

The Exchange believes that the proposed new provisions of Rule 3.4 will further enhance this existing authority by helping to facilitate examinations of foreign members. In particular, the Exchange believes that it and its representatives will be better able to conduct such examinations because foreign members will be required to maintain records in English and U.S. dollars, to have available during such examinations a knowledgeable person who speaks English, and to cover the incremental cost of such examinations beyond what it would cost to conduct an examination within the continental United States.

The Exchange also notes that this approach is consistent with the approach taken in this regard by various other self-regulatory organizations (''SROs'') which do not have rule provisions like those set forth in current CBOE Rule 3.4 and which instead have rule provisions which are substantially the same as the new provisions of Rule 3.4 proposed by this rule change.[6]

In this era of increased internationalization of the securities markets when foreign participation in the U.S. securities markets has become more and more prevalent, the Exchange does not believe that its rules should create undue barriers to member participation on the Exchange by foreign organizations. However, the Exchange has found that the existing extensive requirements in Rule 3.4 have tended to either discourage foreign organizations from becoming members of the Exchange or made it more difficult for them to do so. The Exchange believes that the proposed rule change will enhance competition on the Exchange and between SROs by facilitating foreign member participation on the Exchange, which in turn will inure to the benefit of the securities markets, while at the same time maintaining broad regulatory authority over foreign members, consistent with the authority in this regard possessed by other SROs.

In addition to the proposed changes to Rule 3.4, the Exchange is proposing to make conforming changes to CBOE Rule 3.3. Rule 3.3 addresses qualifications of member organizations and its applicability is currently limited to U.S. organizations because current Rule 3.4 separately addresses qualifications of foreign member organizations. Rule 3.3 is proposed to be revised to eliminate all references that limit its current applicability to U.S. organizations. Accordingly, going forward both U.S. and foreign organizations would need to satisfy the qualification requirements under Rule 3.3, and in addition, foreign members would be required to comply with the new requirements of Rule 3.4 as described above.

2. Statutory Basis

In light of the extensive regulatory authority of the Exchange over all Exchange members, that Exchange members are subject to the comprehensive regulation under Exchange rules and federal and state securities laws, and that the proposed rule change will enhance this authority and regulation by helping to facilitate the examination of foreign members, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Sections 6(b)(2) and 6(b)(5) in particular, by facilitating member participation on the Exchange by foreign organizations and by removing impediments to a free and open market, without diminishing the protection of investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and

[4] 15 U.S.C. 78a *et seq.*

[5] 15 U.S.C. 78a *et seq.*

[6] *See* International Securities Exchange (''ISE'') Rule 301(b), Boston Options Exchange (''BOX'') Section 2(g), NASD Rule 1090 of the Financial Industry Regulatory Authority (''FINRA'') Rules, and Chicago Stock Exchange (''CHX'') Rule 1(f). The proposed rule change uses the formulation of these rules utilized by ISE and BOX. The FINRA and CHX rules are equivalent to the ISE and BOX rules in this regard, except that the FINRA and CHX rules have an additional provision which requires a foreign member to utilize, directly or indirectly, the services of a broker-dealer registered with the Commission, a bank, or clearing agency registered with the Commission located in the United States in clearing all transactions involving members of FINRA or CHX, as applicable, except where both parties to a transaction agree otherwise. CBOE is not proposing to include a similar provision in Rule 3.4 because CBOE already has rules that impose a similar requirement, in that all CBOE members are required to clear their CBOE transactions through a CBOE Clearing Member and through The Options Clearing Corporation (which is a clearing agency that is registered with the Commission and that is located in the United States). (*See, e.g.*, CBOE Rules 3.28 and 6.50.)

(iii) by its terms, does not become operative for thirty days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2008–87 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR–CBOE–2008–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–87, and should be submitted on or before September 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–20229 Filed 8–29–08; 8:45 am]

**BILLING CODE 8010–01–P**

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58404; File No. SR–DTC–2008–08]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Eliminate the Ability To Obtain a Physical Certificate From DTC for Issues That Are Eligible and Participating in the Direct Registration System

August 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 9, 2008, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change No. SR–DTC–2008–08. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the DTC.[2]

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is proposing to amend its Withdrawal-by-Transfer (''WT'') service to eliminate the ability of participants to receive physical certificates for securities positions withdrawn from participants' accounts at DTC when the issue of such securities is eligible and participating in the Direct Registration System.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Over the last four decades, securities ownership has evolved from investors holding physical certificates to evidence their ownership to investors having book-entry positions. The Direct Registration System (''DRS'') was implemented in support of an industry initiative to eliminate physical certificates in equity securities, paralleling the evolution of book-entry form of ownership in other investment instruments, such as mutual funds, treasury and government agency securities, municipal bonds, and options. DRS permits an investor to hold a securities position in book-entry form on the books of the issuer rather than in certificated form or indirectly through a financial intermediary in street name. DRS allows an investor to transfer at any time his or her DRS position from the issuer to a financial intermediary or vice versa through the facilities of DTC. Additionally, an investor holding a DRS position may obtain a physical certificate if the issuer provides for the issuance of certificates.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] The exact text of the DTC's proposed rule change can be found at *http://www.dtcc.com/legal/rule_filings/dtc/2008.*

[3] The Commission has modified portions of the text of the summaries prepared by the DTC.

[4] For more information on DRS, see Securities Exchange Act Release No. 37931 (November 7, 1996) 61 FR 58600 (November 15, 1996) (File No. SR–DTC–96–15).

In 2003, the Securities Industry and Financial Markets Association (''SIFMA''), which was formerly the Securities Industry Association, took the lead in lobbying state legislatures, particularly Delaware, to eliminate the requirement for companies to issue certificates and to allow companies the option of issuing securities in book-entry form. As a result of this industry initiative, all states now allow for equity ownership in book-entry form.[5] U.S. exchanges have also adopted new listing rules that require all exchange-listed securities to be eligible to participate in DRS.[6] Today there are over 7,500 issues eligible to participate in DRS with more than 375 issues no longer offering investors the option of receiving a physical certificate. Industry representatives estimate that investors hold approximately forty million[7] book-entry accounts on the records of the issuers or their transfer agents.

Currently, DTC participants (*i.e.*, broker-dealers and banks) use the Withdrawal-by-Transfer (''WT'') service to instruct DTC to reregister securities assets in the participant's account in the name of an individual investor, a firm, or a third party name. The reregistered assets can be issued in certificate form or in a DRS position. On receipt of a WT instruction from a participant, DTC either (i) sends a certificate to the issuer or the issuer's transfer agent for reregistration in the name of the person or entity identified in the WT instruction or (ii) instructs the issuer or the issuer's transfer agent to debit DTC's position and issue securities in the name of the person or entity identified in the WT instruction.

WT volumes at DTC have decreased from 27,000 daily transactions in 1980 to approximately 1,200 daily transactions to date in 2008. Eighty-eight percent (88%) of all WTs submitted by participants involve DRS eligible issues. Due primarily to participants' voluntary change in their firm policies of ''defaulting to DRS'' (*i.e.*, requesting a DRS statement rather than a physical certificate for their customers), approximately forty-one percent (41%) of all WTs submitted in May 2008 were processed as DRS positions, rather than as physical certificates. This trend away from certificate issuance is expected to continue throughout 2008.

As part of DTC's response to the financial services industry's initiative to achieve ''straight-through processing'' of securities transactions, which is based in part on the elimination of physical certificates in the U.S. market,[8] DTC began a program of steadily increasing its fees for WTs as a disincentive to use of physical certificates.[9]

In an effort to further reduce the industry's dependency on physical certificates, DTC is proposing to eliminate the issuance of physical certificates through its WT service for issues that are participating in DRS. DTC believes the modification of its WT service reaffirms its goals of reducing the costs and risk associated with processing physical certificates.

Pursuant to the proposed rule change, beginning January 1, 2009, DTC would no longer permit participants to request the issuance of a certificate on a WT instruction if the issue is participating in DRS. Instead, DTC would instruct the issuer or its transfer agent to establish a DRS position and provide a DRS statement in lieu of a physical certificate for all issues that are participating in DRS.[10] An investor or the investor's custodian will still be able to obtain a physical certificate by taking the investor's DRS statement directly to the issuer or its transfer agent for conversion to a certificate or by using DTC's Deposit and Withdrawal at Custodian (''DWAC'') process.[11]

The rule change also proposes on or after July 1, 2009, to eliminate a participant's ability to obtain a physical certificate through the WT service for issues eligible but not participating in DRS on or after July 1, 2009 (''elimination date''). For the small number of issues that have not become eligible to participate in DRS by the elimination date, WT instructions requesting a physical certificate may continue to be processed through DWAC or Rush WT processes.

Additionally, the rule change is proposing to eliminate DTC's Direct Mail by the Depository (''DMD'') service for all issues in the fourth quarter of 2009. As a result, DTC would no longer mail certificates to investors or their third parties. Participants would still be able to use the Direct Mail by Agent (''DMA'') service, in which transfer agents provide DRS statements or physical certificates to investors or their appointed third parties. Physical certificates could also be obtained through DTC's Central Delivery processes in which DTC mails the physical certificates in bulk to the participant or allows the participant to pick up the certificate.

2. Statutory Basis

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended,[12] and the rules and regulations thereunder because the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions by modifying a DTC service in order to reduce the inherent risks associated with physical certificates.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

DTC has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

[5] Puerto Rico is currently the only jurisdiction requiring equity securities to be certificated.

[6] Securities Exchange Act Release Nos. 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) [File No. SR–Amex–2006–40]; 54289 (August 8, 2006), 71 FR 47278 (August 16, 2006) [File No. SR–NYSE–2006–29]; 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR–NASDAQ–2006–008]; and 54410 (September 7, 2006), 71 FR 54316 (September 14, 2006) [File No. SR–NYSEArca–2006–31].

[7] Based on a SIFMA webinar held on June 24, 2008.

[8] For more information on straight through processing and dematerialization initiatives, see Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004) [File No. S7–13–04].

[9] DTC charges approximately $125.00 per transaction for a WT instruction requesting a physical certificate for an issue participating in DRS and $6.00 per transaction for a WT instruction requesting a DRS position.

[10] Issues that participate in the DRS program allow investors to hold their assets in DRS book-entry form on the books of the issuer.

[11] DWAC is a method of electronically transferring shares between participants and the transfer agent as custodian. For more information about the DWAC service, see Securities Exchange Act Release No. 30283 (January 23, 1992), 57 FR 3658 (January 30, 1992) [File No. SR–DTC–91–16] (order granting approval of the DWAC service).

[12] 15 U.S.C. 78q–1.

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2008–08 in the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR–DTC–2008–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the DTC and on the DTC's Web site, *http://www.dtcc.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2008–08 and should be submitted on or before September 23, 2008. For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–20249 Filed 8–29–08; 8:45 am]

**BILLING CODE 8010–01–P**

[13] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58410; File No. SR–Phlx–2008–53]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.); Order Granting Approval of Proposed Rule Change Relating to an Exchange Member's Conduct of Doing Business With the Public

August 22, 2008.

## I. Introduction

On July 11, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') (n/k/a NASDAQ OMX PHLX, Inc.)[1] filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change relating to the Exchange's rules governing doing business with the public. On July 16, 2008, the Commission issued a release noticing the proposed rule change, which was published for comment in the **Federal Register** on July 22, 2008.[4] The Comment period expired on August 12, 2008. The Commission did not receive any comment letters in response to the proposed rule change. This order approves the proposed rule change.

## II. Description of Phlx Proposal

Phlx proposed to amend Phlx Rules 1024 (Conduct of Accounts for Options Trading), 1025 (Supervision of Accounts), 1027 (Discretionary Accounts), and 1049 (Communications to Customers) that govern an Exchange member organizations' conduct of doing business with the public. Specifically, the proposed rule change would require that member organizations integrate the responsibility for supervision of a member organizations' public customer options business into their overall supervisory and compliance programs. In addition, the proposal would require a member organization to strengthen its supervisory procedures and internal controls as they relate to its public customer options business.

*A. Integration of Options Supervision*

The purpose of the proposed rule change is to create a supervisory structure for options that is similar to that required by New York Stock Exchange (''NYSE'') Rule 342 and National Association of Securities Dealers (''NASD'') Rule 3010.[5] The proposed rule change would eliminate the requirement that member organizations qualified to do a public customer business in options must designate a single person to act as Senior Registered Options Principal (''SROP'') for the member organization and that each such member organization designate a specific individual as a Compliance Registered Options Principal (''CROP''). Instead member organizations would be required to integrate the SROP and CROP functions into their overall supervisory and compliance programs. The proposed rule change is substantively similar to recent amendments to the rules of the Chicago Board Options Exchange, Inc. (''CBOE'') which were approved by the Commission.[6]

The SROP concept was first introduced by Phlx and other options exchanges during the early years of the development of the listed options market. Initially, member organizations were required to designate one or more persons qualified as Registered Options Principals (''ROPs'') having supervisory responsibilities in respect of the member organization's options business. As the number of ROPs at larger member organizations began to increase, Phlx imposed an additional requirement that member organizations designate one of their ROPs as the SROP. This was intended to eliminate confusion as to where the compliance and supervisory responsibilities lay by centralizing in a single supervisory officer overall responsibility for the supervision of a

[1] The Exchange recently changed its name to NASDAQ OMX PHLX, Inc. *See* Securities Exchange Act Release No. 58380 (August 18, 2008) (SR–Phlx-2008–61).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 58168 (July 16, 2008), 73 FR 42641 (July 22, 2008) (''proposal'').

[5] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007). The FINRA rule book currently consists of both NASD rules and certain NYSE Rules that FINRA has incorporated.

[6] *See* Securities Exchange Act Release No. 56971 (December 14, 2007), 72 FR 72804 (December 21, 2007) (SR–CBOE–2007–106).

member organization's options activities.[7] Subsequently, following the recommendation of the Commission's Options Study, Phlx and other options exchanges required member organizations to designate a CROP to be responsible for the member organization's overall compliance program in respect of its options activities.[8] The CROP may be the same person who is designated as SROP.

Since the SROP and CROP requirements were first imposed, the supervisory function in respect of the options activities of most securities firms has been integrated into the matrix of supervisory and compliance functions in respect of the firms' other securities activities. This not only reflects the maturity of the options market, but also recognizes the ways in which the uses of options themselves have become more integrated with other securities in the implementation of particular strategies. Thus, the current requirement for a separately designated senior supervisor in respect of all aspects of a member organization's options activities, rather than clarifying the allocation of supervisory responsibilities within the member organization, may have just the opposite effect by failing to take into account the way in which these responsibilities are actually assigned. By permitting supervision of a member organization's options activities to be handled in the same manner as the supervision of its other securities and futures activities, the proposed rule change will ensure that supervisory responsibility over each segment of the member organization's business is assigned to the best qualified person in the member organization, thereby enhancing the overall quality of supervision. The same holds true for the compliance function.

For example, member organizations generally designate one person to have supervisory responsibility over the application of margin requirements and other matters pertaining to the extension of credit. The proposed rule change would enable a member organization to include within the scope of such a person's duties the supervision over the proper margining of options accounts, thereby assuring that the most qualified person is charged with this responsibility and at the same time eliminating any uncertainty that might now exist as to whether this responsibility lies with the senior credit supervisor or with the SROP.

Similarly, the proposed rule change would allow a member organization to specifically designate one or more individuals as being responsible for approving a ROP's acceptance of discretionary accounts[9] and exceptions to a member organization's suitability standards for trading uncovered short options.[10] The proposed rule changes would allow member organizations the flexibility to assign such responsibilities, which formerly rested with the SROP and/or CROP, to more than one ROP qualified individual where the member organization believes it advantageous to do so to enhance its supervisory or compliance structure. Typically, a member organization may wish to divide these functions on the basis of geographic region or functional considerations. Phlx Rule 1024 would be amended to clarify the qualification requirements of individuals designated as ROPs.[11] Rule 1024 would also be amended to specify the registration requirements of individuals who accept orders from non-broker-dealer customers.[12]

The proposed rule change would call for options discretionary accounts, the acceptance of which must be approved by a ROP qualified individual (other than the ROP who accepted the account), to be supervised in the same manner as the supervision of other securities accounts that are handled on a discretionary basis.[13] The proposed rule change would eliminate the requirement that discretionary options orders be approved on the day of entry by a ROP (with one exception as described below).[14] This requirement predates the Options Study and is not consistent with the use of supervisory tools in computerized format or exception reports generated after the close of a trading day. No similar requirement exists for supervision of other securities accounts that are handled on a discretionary basis.[15] Discretionary orders must be reviewed in accordance with a member organization's written supervisory procedures. The proposed rule change would ensure that supervisory responsibilities are assigned to specific ROP qualified individuals, thereby enhancing the quality of supervision.

Phlx Rule 1027 would be revised by adding, as Commentary .01, a requirement that any member organization that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary account activity must establish and implement procedures to require ROP qualified individuals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered. The Exchange believes that any member organization that does not utilize computerized surveillance tools to monitor discretionary account activity should continue to be required to perform the daily manual review of discretionary orders.

Under the proposed rule change, options discretionary accounts will continue to receive frequent appropriate supervisory review by designated ROP qualified individuals. Additionally, member organizations will continue to be required to designate ROP qualified individuals to review and approve the acceptance of options discretionary accounts in order to determine whether the ROP accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the proposed strategies or transactions.[16] This requirement provides an additional level of supervisory audit over options discretionary accounts that does not exist for other securities discretionary accounts.

In addition, the proposed rule change would require that each member organization submit to the Exchange a written report by April 1 of each year, that details the member organization's supervision and compliance effort, including its options compliance program, during the preceding year and reports on the adequacy of the member organization's ongoing compliance processes and procedures.[17]

Proposed Phlx Rule 1025(h) would require that each member organization submit, by April 1st of each year, a copy of the Phlx Rule 1025(g) annual report to one or more of its control persons or, if the member organization has no control person, to the audit committee of its board of directors or its equivalent committee or group.[18]

Proposed Phlx Rule 1025(g) would provide that a member organization that

[7] *See* Securities and Exchange Commission, 96th Cong., 1st Sess., Report of the Special Study of the Options Markets (Comm. Print 1978) 316 fn. 11 (''Options Study'').

[8] *Id.* at p. 335.

[9] *See* proposed Phlx Rule 1027 (a)(i).

[10] *See* proposed Phlx Rule 1024(c).

[11] *See* proposed Commentaries .06 and .07 to Phlx Rule 1024.

[12] *See* proposed Commentary .08 to Phlx Rule 1024.

[13] *See* proposed Phlx Rule 1025.

[14] *See* proposed Phlx Rule 1027(a).

[15] *See e.g.*, NYSE Rule 408.

[16] *See* proposed Phlx Rule 1027(a).

[17] *See* proposed Phlx Rule 1025(g), which is modeled after NYSE Rule 342.30.

[18] *See* proposed Phlx Rule 1025(h) which is modeled after NYSE Rule 354.

specifically includes its options compliance program in a report that complies with substantially similar NYSE and NASD rule requirements will be deemed to have satisfied the requirements of Phlx Rules 1025(g) and 1025(h).

Although the proposed rule change would eliminate entirely the positions and titles of the SROP and CROP, member organizations would still be required to designate a single general partner or executive officer to assume overall authority and responsibility for internal supervision, control of the member organization and compliance with securities laws and regulations.[19] Member organizations would also be required to designate specific qualified individuals as having supervisory or compliance responsibilities over each aspect of the member organization's options activities and to set forth the names and titles of these individuals in their written supervisory procedures.[20] This is consistent with the integration of options supervision into the overall supervisory and compliance structure of a member organization. In connection with the approval of these proposed rule changes, the Exchange intends to review member organizations' written supervisory and compliance procedures in the course of the Exchange's routine examination of member organizations to ensure that supervisory and compliance responsibilities are adequately defined.

The Exchange believes that the proposed rule changes recognize that options are no longer in their infancy, have become more integrated with other securities in the implementation of particular strategies, and thus should not continue to be regulated as though they are new and experimental products. The Exchange believes that the proposed rule change is appropriate and would not materially alter the supervisory operations of member organizations. The Exchange believes the supervisory and compliance structure in place for non-options products at most member organizations is not materially different from the structure in place for options.

*B. Supervisory Procedures and Internal Controls*

The Exchange also proposed to amend certain rules to strengthen member and member organizations' supervisory procedures and internal controls as they relate to the members' public customer options business. The proposed rule changes described below are modeled after NYSE and NASD rules approved by the Commission in 2004.[21] The Exchange believes the following proposal to strengthen member supervisory procedures and internal controls is appropriate and consistent with the preceding proposal to integrate options and non-options sales practice supervision and compliance functions.

Phlx Rule 1025(a)(iii) would be revised to require the development and implementation of written policies and procedures reasonably designed to supervise sales managers and other supervisory personnel who service customer options accounts (i.e., who act in the capacity of a registered representative).[22] This requirement would apply to branch office managers, sales managers, regional/district sales managers, or any person performing a similar supervisory function. Such policies and procedures are expected to encompass all options sales-related activities. Proposed Phlx Rule 1025(a)(iii)(A) would require that supervisory reviews of producing sales managers be conducted by a qualified ROP who is either senior to, or otherwise ''independent of'', the producing manager under review.[23] This provision is intended to ensure that all options sales activity of a producing manager is monitored for compliance with applicable regulatory requirements by persons who do not have a personal interest in such activity.

Proposed Phlx Rule 1025(a)(iii)(B) would provide a limited exception for members so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the review. In this case, the reviews may be conducted by a qualified ROP to the extent practicable. Under proposed Phlx Rule 1025(a)(iii)(C), a member relying on the limited size and resources exception must document the factors used to determine that compliance with each of the ''senior'' or ''otherwise independent'' standards of Phlx Rule 1025(a)(iii)(A) is not possible, and that the required supervisory systems and procedures in place with respect to any producing manager comply with the provisions of Phlx Rule 1025(a)(iii)(A) to the extent practicable.[24]

Proposed Phlx Rule 1025(c)(i) would require member organizations to develop and maintain adequate controls over each of their business activities.[25] The proposed rule would further require that such controls include the establishment of procedures to independently verify and test the supervisory systems and procedures for those business activities. Member organizations would be required to include in the annual report prepared pursuant to Phlx Rule 1025(g) a review of their efforts in this regard, including a summary of the tests conducted and significant exceptions identified. The Exchange believes proposed Phlx Rule 1025(c)(i) would enhance the quality of member organizations' supervision.[26]

Proposed Phlx Rule 1025(d) would establish requirements for branch office inspections similar to the requirements of NYSE Rule 342.24. Specifically, Phlx Rule 1025(d) would require a member organization to inspect, at least annually, each supervisory branch office and inspect each non-supervisory branch office at least once every three years.[27] The proposed rule would further require that persons who conduct a member organization's annual

[19] *See* proposed Phlx Rule 1025(a).

[20] *See* proposed Commentary .02 to Phlx Rule 1025.

[21] *See* Securities Exchange Act Release Nos. 49882 (June 17, 2004), 69 FR 35108 (June 23, 2004) (SR–NYSE–2002–36) and 49883 (June 17, 2004), 69 FR 35092 (June 23, 2004) (SR–NASD–2002–162).

[22] *See* proposed Phlx Rule 1025(a)(iii) which is modeled after NYSE Rule 342.19.

[23] An ''otherwise independent'' person is defined in proposed Phlx Rule 1025(a)(iii)(A) as one who: May not report either directly or indirectly to the producing manager under review; must be situated in an office other than the office of the producing manager; must not otherwise have supervisory responsibility over the activity being reviewed; and must alternate such review responsibility with another qualified person every two years or less. Further, if a person designated to review a producing manager receives an override or other income derived from that producing manager's customer activity that represents more than 10% of the designated person's gross income derived from the member organization over the course of a rolling twelve-month period, the member organization must establish alternative senior or otherwise independent supervision of that producing manager to be conducted by a qualified Registered Options Principal other than the designated person receiving the income.

[24] Paragraph 1025 (a)(iii)(D) of Phlx Rule 1025 would provide that a member organization that complies with requirements of the NYSE or the NASD that are substantially similar to the requirements in Phlx Rules 1025 (a)(iii)(A), (a)(iii)(B) and (a)(iii)(C) will be deemed to have met such requirements.

[25] Current Phlx Rule 1025(c) regarding designation of foreign currency options principals was renumbered as 1025(i).

[26] *See* proposed Phlx Rule 1025(c)(i) which is modeled after NYSE Rule 342.23. Paragraph (c)(ii) of Phlx Rule 1025 would provide that a member organization that complies with requirements of the NYSE or the NASD that are substantially similar to the requirements in Phlx Rule 1025(c)(i) will be deemed to have met such requirements.

[27] Proposed Phlx Rules 1025(d)(i)(A) and (B) would provide members with two exceptions from the annual branch office inspection requirement: A member may demonstrate to the satisfaction of the Exchange that other arrangements may satisfy the Rule's requirements for a particular branch office, or based upon a member organization's written policies and procedures providing for a systematic risk-based surveillance system, the member organization submits a proposal to the Exchange and receives, in writing, an exemption from this requirement pursuant to Phlx Rule 1025(e).

branch office inspection must be independent of the direct supervision or control of the branch office (i.e., not the branch office manager, or any person who directly or indirectly reports to such manager, or any person to whom such manager directly reports). The Exchange believes that requiring branch office inspections to be conducted by someone who has no significant financial interest in the success of a branch office should lead to more objective and vigorous inspections.

Under proposed Phlx Rule 1025(e), any member organization seeking an exemption, pursuant to Phlx Rule 1025(d)(ii), from the annual branch office inspection requirement would be required to submit to the Exchange written policies and procedures for systematic risk-based surveillance of its branch offices, as defined in Phlx Rule 1025(e). Proposed Phlx Rule 1025(f) would require that annual branch office inspection programs include, at a minimum, testing and verification of specified internal controls.[28] Paragraph (d)(3) of Phlx Rule 1025 would provide that a member organization that complies with requirements of the NYSE or the NASD that are substantially similar to the requirements in Phlx Rules 1025(d), (e) and (f) will be deemed to have met such requirements.

In conjunction with the proposed changes to Phlx Rules 1025(d), (e) and (f), the Exchange proposes to add new Commentary .09 to Phlx Rule 1024 to define ''branch office'' in a way that is substantially similar to the definition of branch office in NYSE Rule 342.10.

Proposed Phlx Rule 1024(g)(iv) would require a member organization to designate a Chief Compliance Officer (CCO). Proposed Phlx Rule 1025(g)(v) would require each member organization's Chief Executive Officer (CEO), or equivalent, to certify annually per subsection (A) that the member organization has in place processes to: (1) Establish and maintain policies and procedures reasonably designed to achieve compliance with applicable Exchange rules and federal securities laws and regulations; (2) modify such policies and procedures as business, regulatory, and legislative changes and events dictate; and (3) test the effectiveness of such policies and procedures on a periodic basis, the timing of which is reasonably designed to ensure continuing compliance with Exchange rules and federal securities laws and regulations.

Proposed Phlx Rule 1025(g)(v) would further require that the CEO attest the CEO has conducted one or more meetings with the CCO in the preceding 12 months to discuss the compliance processes in proposed Phlx Rule 1025(g)(v), that the CEO has consulted with the CCO and other officers to the extent necessary to attest to the statements in the certification, and the compliance processes are evidenced in a report, reviewed by the CEO, CCO, and such other officers as the member organization deems necessary to make the certification, that is provided to the member organization's board of directors and audit committee (if such committee exists).[29]

Under proposed Phlx Rule 1025(b)(ii), a member, upon a customer's written instructions, may hold mail for a customer who will not be at his or her usual address for no longer than two months if the customer is on vacation or traveling, or three months if the customer is going abroad. This provision would help ensure that members that hold mail for customers who are away from their usual addresses, do so only pursuant to the customer's written instructions and for a specified, relatively short period of time.[30]

Proposed Phlx Rule 1025(b)(iii) would require that, before a customer's options order is executed, the account name or designation must be placed upon the memorandum for each transaction. In addition, only a qualified ROP may approve any changes in account names or designations. The ROP also must document the essential facts relied upon in approving the changes and maintain the record in a central location. A member would be required to preserve any account designation change documentation for a period of not less than three years, with the documentation preserved for the first two years in an easily accessible place, as the term ''easily accessible place'' is used in Exchange Act Rule 17a–4.[31] The Exchange believes the proposed rule would help to protect account name and designation information from possible fraudulent activity.[32]

Phlx Rule 1027(e) allows member organizations to exercise time and price discretion on orders for the purchase or sale of a definite number of options contracts in a specified security. The Exchange proposes to amend its Rule 1027(e) to limit the duration of this discretionary authority to the day it is granted, absent written authorization to the contrary. In addition, the proposed rule would require any exercise of time and price discretion to be reflected on the customer order ticket. The proposed one-day limitation would not apply to time and price discretion exercised for orders effected with or for an institutional account (as defined in the rule) pursuant to valid Good-Till-Cancelled instructions issued on a ''not held'' basis. The Exchange believes that investors will receive greater protection by clarifying the time such discretionary orders remain pending.[33]

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.[34] In particular, the Commission finds that the proposed rule change would integrate the supervision and compliance functions relating to member organizations' public customer options activities into the overall supervisory structure of a member organization, thereby eliminating any uncertainty over where supervisory responsibility lies. In addition, the proposed rule change would foster the strengthening of members' and member organizations' internal controls and supervisory systems. As such, the Commission finds that the proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[35] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and in general, to protect investors and the public interest.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–Phlx–2008–53), be and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–20228 Filed 8–29–08; 8:45 am]

**BILLING CODE 8010–01–P**

[28] *See* proposed Phlx Rules 1025(e) and (f) which are modeled after NYSE Rules 342.25 and 342.26.

[29] *See* proposed Phlx Rule 1025(g)(v) which is modeled after NASD Rule 3013 and NYSE Rule 342.30(e).

[30] *See* proposed Phlx Rule 1025(b)(ii) which is modeled after NASD Rule 3110(i).

[31] *See* 17 CFR 240.17a–4.

[32] *See* proposed Phlx Rule 1025(b)(iii) which is modeled after NASD Rule 3110(j).

[33] *See* proposed Phlx Rule 1027(e) which is modeled after NASD Rule 2510(d)(1).

[34] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58405; File No. SR–Phlx–2008–63]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Execution Fees on the XLE Fee Schedule

August 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to amend the Execution Fees on the XLE Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.phlx.com/regulatory/reg_rulefilings.aspx*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to adjust the Execution Fees for XLE®, the Exchange's equity trading platform, in light of the expected reduction in volume following the Exchange's announcement to XLE Participants that XLE® will cease operations in October 2008. The Exchange informed XLE Participants on August 4, 2008, that the Exchange intends to discontinue XLE® on or before October 24, 2008. Following this announcement, the Exchange expects that XLE Participants will now begin to reduce their operations on XLE®, thereby reducing volume on XLE®.

The amendments to the XLE Fee Schedule include a deletion of the Execution Fees[5] currently in place, including the categories of fees based on the volume tier level executed through XLE® [6] and on the XLE Participant's status as a net maker or net taker of liquidity.[7] As amended, the Execution Fee for removing liquidity will be $0.003 per share executed on XLE®.[8] There will be no credit for providing liquidity. These fees will apply to XLE Participants without regard to volume tiers or status as a net taker or net maker of liquidity. In addition, the XLE Fee Schedule will be amended to delete footnotes and references in footnotes referring to volume tier and net maker and net taker qualifications. The remaining footnotes will be renumbered. The amended Execution Fee will be operative for trades that settle on or after September 2, 2008.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members who continue to use XLE® as the amended fees apply equally to all XLE Participants and will only operate for less than 60 days as the Exchange intends to discontinue XLE® on or before October 24, 2008. In addition, the Exchange believes that its proposal is consistent with Rule 610(c)(1) of Regulation NMS [11] as the amended Execution Fee for removing liquidity from XLE® does not exceed $0.003 per share.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and paragraph (f)(2) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2008–63 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR–Phlx–2008–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] *See* Securities Exchange Act Release No. 56526 (September 25, 2007), 72 FR 56117 (SR–Phlx–2007–67).

[6] *See* footnote 4 of the current XLE Fee Schedule.

[7] *See* footnotes 2 and 3 of the current XLE Fee Schedule.

[8] The current fee for securities executed on XLE® with a per share price below $1.00 that remove liquidity will remain at 0.1% (i.e., 10 basis points) of the total dollar value of the transaction.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 17 CFR 242.610(c)(1).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–63 and should be submitted on or before September 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–20250 Filed 8–29–08; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before October 2, 2008. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205–7044.

**SUPPLEMENTARY INFORMATION:**

*Title:* U.S. Small Business Administration Advisory Committee Membership Nominee Information.

*Description of Respondents:* To collect information for candidates for Advisory Council.

*Form Number:* SBA Form 898.

*Annual Responses:* 100.

*Annual Burden:* 100.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. E8–20216 Filed 8–29–08; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Advisory Committee on Veterans Business Affairs

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of open Federal Advisory Committee Meeting.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.

**DATES:** The meeting will be held on September 23–24, 2008, from 9 a.m. to 5 p.m. Eastern Standard Time.

**ADDRESSES:** The meeting will be held at the U.S. Small Business Administration, 409 3rd Street, SW., Eisenhower Conference Room, 2nd floor, Side B, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration.

The purpose of the meeting is scheduled as a full committee meeting. The agenda will include: (1) Status of the current committee; (2) Orientation for new members; (3) Discussion of the permanency of SBA's Advisory Committee; (4) A review of SBA's Programs and Services; (5) Implementation steps of Public Law 110–186; and (6) Annual report and planning with the National Veterans Business Development Corporation (NVBDC).

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Advisory Committee on Veterans Business Affairs must contact Cheryl Simms, Program Liaison, by September 15, 2008, by fax or e-mail in order to be placed on the agenda. Cheryl Simms, Program Liaison, U.S. Small Business Administration, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416, Telephone number: (202) 205–6773, Fax number: 202–481–6085, e-mail address: *cheryl.simms@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Cheryl Simms, Program Liaison at (202) 205–6773; e-mail address: *cheryl.simms@sba.gov*; or SBA, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416.

For more information, please visit our Web site at *http://www.sba.gov/vets.*

Dated: August 21, 2008.

**Cherylyn Lebon,**

*SBA Committee Management Officer.*

[FR Doc. E8–20217 Filed 8–29–08; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 6339]**

### Determination Pursuant to the Foreign Missions Act, Removing Conditions and Restrictions on the Cuban Interests Section and Its Personnel With Respect to the Acquisition and Disposition of Motor Vehicles in the United States

### Summary

The United States Interests Section of the Embassy of Switzerland in Havana, Cuba (''the U.S. Interests Section''), is the mission through which the U.S. communicates with the Government and people of Cuba. The Cuban Government's counterpart mission in the United States is the Cuban Interests Section of the Embassy of Switzerland in Washington, DC (''the Cuban Interests Section''). The Foreign Missions Act of 1982 as amended (22 U.S. Code 4301, *et*

*seq.*, ''the Act'') provides the domestic legal authority for regulating ''benefits'' to foreign missions in the United States and for imposing terms and conditions on the provision of such benefits.

In a Determination published in the **Federal Register** on August 25, 2003 (Volume 68, Number 164), the Department of State imposed a number of terms and conditions with respect to the acquisition and disposition of motor vehicles by or on behalf of the Cuban Interests Section. Those conditions were imposed as a reciprocal measure because the Cuban Government for some time had imposed restrictions and impediments to the importation, purchase, and resale of vehicles by the U.S. Interests Section in Cuba.

The Department of State is now rescinding the Determination published August 25, 2003, in the **Federal Register** and lifting all terms and conditions that it imposed on the Cuban Interests Section and its staff and dependent family members with regard to the acquisition and disposition of motor vehicles. Upon the publication of this Determination in the **Federal Register**, the Cuban Interests Section, its staff, and their dependent family members will be permitted to acquire and dispose of motor vehicles without restriction other than restrictions or other requirements imposed on all foreign missions and their members to obtain specific motor vehicle services from the U.S. Department of State.

**Persons Affected by This Action**

This Determination applies primarily to the Cuban Interests Section of the Embassy of Switzerland in Washington, DC, its staff, and their dependent family members. It also applies to any person subject to the jurisdiction of the United States, whether a natural person, business, or other entity of any sort, that intends to sell or lease a motor vehicle to, or purchase a motor vehicle from, the Cuban Interests Section or its personnel.

**Legal Authority**

This Determination is issued pursuant to the Act, which authorizes the Secretary of State to provide ''benefits'' to foreign missions in the United States and to impose certain terms and conditions upon the provision of such benefits, if such action is reasonably necessary to achieve a statutory purpose identified in the Act. 22 U.S.C. 4304. The term ''benefits'' is defined to include any of a number of specifically enumerated goods and services as well as ''any other benefits as the Secretary may designate.'' 22 U.S.C. 4302(a)(1) Pursuant to Department of State Delegation of Authority No. 214, section 14 (September 20, 1994), the authorities that the Act vests in the Secretary of State were delegated by the Secretary to the Assistant Secretary of State for Diplomatic Security, who is also the Director of the Office of Foreign Missions.

**Designation of Benefits, Findings, and Specific Determinations**

Pursuant to the authority vested in me by and through the above-cited provisions of law and Delegation of Authority, I hereby find and determine as follows:

(1) *Designation of Benefits:* The acquisition of a motor vehicle is encompassed within the statutory designation of a ''benefit'' in the Foreign Missions Act because it is a form of transportation. 22 U.S.C. 4302(a)(1)(C). The Determination published in the **Federal Register** on August 25, 2003 (68 FR 164), also designated the privilege of disposing of a motor vehicle to a U.S. person within the United States as a benefit under the Act.

(2) *Findings:* The Government of Cuba has indicated that it will immediately end all restrictions on the importation and local purchase of vehicles by the U.S. Interests Section and its staff in Havana, Cuba, if the United States removes the conditions imposed on the acquisition and disposition of vehicles by or on behalf of the Cuban Interests Section and its staff in Washington, DC, which were implemented by the Determination published in the **Federal Register** on August 25, 2003.

(3) *Determination:* I hereby determine that it is not necessary at this time, either on the basis of reciprocity or for any other reason, to impose terms or conditions on the acquisition or disposition of vehicles by or on behalf of the Cuban Interests Section and its staff and dependent family members in Washington, DC. The Determination published in the **Federal Register** on August 25, 2003 (Volume 68, Number 164) is hereby rescinded, and all terms and conditions imposed by that Determination are hereby annulled.

(4) *Date of Effect:* The provisions of this Determination shall take effect upon its publication in the **Federal Register**.

(5) Publication of this Determination in the **Federal Register** constitutes notice to persons subject to the jurisdiction of the United States that terms and conditions on the acquisition and disposition of vehicles by or on behalf of the Cuban Interests Section are hereby rescinded. Persons wishing clarification as to the applicability of this Determination may contact the Office of Foreign Missions, U.S. Department of State, Washington, DC 20520; or by telephone: (202) 647–4554.

Dated: August 14, 2008.

**Eric J. Boswell,**

*Assistant Secretary of State for Diplomatic Security and Director, Office of Foreign Missions, Department of State.*

[FR Doc. E8–20309 Filed 8–29–08; 8:45 am]

BILLING CODE 4710–43–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Air Traffic Procedures Advisory Committee

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

**SUMMARY:** The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

**DATES:** The meeting will be held Tuesday, November 4, 2008, from 9 a.m. to 4:30 p.m., and Wednesday, November 5, 2008, from 9 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Jehlen, Executive Director, ATPAC, System Operations and Safety, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 493–4527.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, November 4, 2008 from 9 a.m. to 4:30 p.m., and Wednesday, November 5, 2008, from 9 a.m. to 4:30 p.m. The agenda for this meeting will cover: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify the person listed above not later than October 24, 2008. The next quarterly meeting of the FAA ATPAC is planned to be held from January 13–14, 2009, in Miami, FL.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on August 26, 2008.

**Richard Jehlen,**

*Executive Director, Air Traffic Procedures, Advisory Committee.*

[FR Doc. E8–20310 Filed 8–29–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2008–0204]**

### Application by the Massachusetts Department of Highways for a Preemption Determination on the City of Boston's Hazardous Materials Routing Designation

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), (DOT).

**ACTION:** Notice of application for preemption determination, consolidation with the American Trucking Associations, Inc. (ATA) application for preemption determination, and extension of time to submit comments.

**SUMMARY:** FMCSA provides notice and invites interested parties to submit comments on an application by the Massachusetts Department of Highways (MassHighway) for an administrative determination on whether Federal law preempts highway routing designations issued by the City of Boston (Boston) regarding the transportation of hazardous materials. MassHighway seeks a preemption determination to resolve whether Boston's regulatory scheme on hazardous materials transportation in Boston remains consistent with Federal law in light of the history of the Boston regulation, changes that have occurred since the regulation's inception in 1980, and policy changes in issuing permits under the regulation. The MassHighway application, filed on July 25, 2008, encompasses the issues raised by ATA in its application for preemption determination filed on May 30, 2008. Accordingly, the MassHighway application will be consolidated with the ATA application in Docket No. FMCSA–1008–0204 and the time period for submitting comments is extended by this notice.

**DATES:** Comments received by October 17, 2008 and rebuttal comments received by December 1, 2008 will be considered before an administrative ruling is issued. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–2008–0204 by any of the following methods:

*Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.

*Fax:* 1–202–493–2251.

*Mail to:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

*Courier or Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. *e.t.,* Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information, see the Public Participation and Supplementary Information headings below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the ground floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://www.regulations.gov.*

*Public participation:* The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want confirmation of receipt of your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** James O. Simmons, Chief, Hazardous Materials Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, or at *james.simmons@dot.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:** A copy of each comment must be sent to Monica E. Conyngham, Chief Counsel, MassHighway, 10 Park Plaza, Boston, MA 02116–3969 and Richard Moskowitz, Vice President and Regulatory Affairs Counsel, American Trucking Associations, 950 North Glebe Road, Arlington, VA 22203. You are required to include with your comments a certification that you provided a copy of your comments to MassHighway and ATA. (The following format is suggested: ''I certify copies of this comment were sent to Ms. Conyngham, MassHighway, and Mr. Moskowitz, ATA, at the address specified in the **Federal Register**.'')

### Background

Title 49 U.S.C. 5125 includes several preemption provisions. Section 5125(c)(1) allows a State or Indian tribe to establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with 49 U.S.C. 5112(b).

Section 5112(b) requires the Secretary of Transportation (the Secretary), in consultation with the States, to prescribe by regulation standards for the States and Indian tribes to follow when designating specific highway routes for transportation of hazardous materials. The Secretary has delegated to the Administrator of the FMCSA authority and responsibility for highway routing of hazardous materials. See 49 CFR 1.73(d)(2). The standards required by 49 U.S.C. 5112(b) for establishing highway

routing requirements for non-radioactive hazardous materials are set forth in 49 CFR part 397, subpart C, and apply to any designations established or modified on or after November 14, 1994. *See* 49 CFR 397.69(a). A State or Indian tribe must follow FMCSA standards when establishing highway routing requirements for hazardous materials. *See* 49 CFR 397.71 (Federal standards for routing of nonradioactive hazardous materials (NRHM)). Except as provided in §§ 397.75 (dispute resolution) and 397.219 (waiver), a NHRM route designation made in violation of § 397.69(a) is preempted pursuant to section 105(b)(4) of the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 5125(c), 49 CFR 397.69(b).

MassHighway submits that the Boston regulation on routing of hazardous materials has been in place since 1980. Subsequent construction on the Central Artery and Third Harbor Tunnel Project (often referred to as the ''Big Dig'') impacted the routes used by transporters of hazardous materials in Boston. After September 11, 2001, Boston changed its policy on issuing permits necessary for transportation of hazardous materials through Boston. Boston officials take the position that Boston's regulation is grandfathered under 49 U.S.C. 5125(c)(2)(A) and (B) and that minor routing changes have not impacted the fact that the regulation is not subject to preemption under 49 CFR 397.69. Boston also argues that its increased enforcement and policy on issuing permits falls squarely within its permitting authority. MassHighway acknowledges that the regulated community argues that the policy changes are a *de facto* change in routing restrictions and hazmat carriers denied permits must now pass through multiple communities surrounding Boston, increasing and transferring risk to other communities and depriving the public of involvement in the routing process. MassHighway requests that FMCSA review the facts, analysis, and exhibits presented in its application, including the above-described circumstances, prior DOT Inconsistency and Consistency Determinations, and a 1981 Federal District Court decision, to determine whether the Boston regulation and current enforcement scheme remain grandfathered under Federal law. *American Trucking Associations, Inc. et al.* v. *city of Boston et al.* (D. Mass. filed April 6, 1981) (Copy of unpublished opinion provided in MassHighway application.)

On May 30, 2008, ATA filed an Application for Preemption Determination on the City of Boston's routing and transportation restrictions applicable to certain hazardous materials. Notice of this application and request for comments was published in the **Federal Register** on August 8, 2008. *See* 73 FR 46349 (August 8, 2008). The ATA application and **Federal Register** notice may be found at *http://www.regulations.gov* under non-rulemaking docket no. FMCSA–2008–0204. ATA alleges that Boston, in the course of the construction of the Central Artery Tunnel, changed designated hazardous materials routes through Boston and, in doing so, failed to comply with the requirements of § 397.71. ATA requested that the FMCSA Administrator make a determination on whether the highway routing designations established by Boston are preempted pursuant to § 397.69(b).

FMCSA received the MassHighway application on or about July 25, 2008. MassHighway addresses the same central issue as that raised in the ATA application, *e.g.*, whether the Boston hazardous materials routing designations are subject to the preemption provisions of § 397.69. In order to avoid duplication and address the issues raised in these applications in a thorough and complete manner, FMCSA is consolidating the MassHighway application for a preemption determination with that of the ATA. Copies of the MassHighway application for preemption and the ATA application for preemption determination are available for review in the consolidated docket for this notice. You may view or obtain a copy of the applications online by visiting *http://www.regulations.gov* and going to the docket number for this matter (FMCSA–2008–0204).

**Public Comments**

FMCSA seeks comments on (1) whether Boston's highway routing designations were established or modified prior to November 14, 1994, exempting them from the preemption provisions of 49 CFR 397.69 and/or (2) whether Boston's highway routing designations are subject to the preemption provisions of 397.69. Comments should specifically address the preemption standard established under 49 CFR 397.69 and 49 U.S.C. 5125(c).

Issued on: August 26, 2008.

**David Hugel,**

*Deputy Administrator.*

[FR Doc. E8–20222 Filed 8–29–08; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–99–6156, FMCSA–00–7006, FMCSA–00–7165, FMCSA–02–12294]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 34 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective September 21, 2008. Comments must be received on or before October 2, 2008.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–99–6156, FMCSA–00–7006, FMCSA–00–7165, FMCSA–02–12294, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or

Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketInfo.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## Exemption Decision

This notice addresses 34 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 34 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

John W. Arnold
Derric D. Burrell
Anthony J. Cesternino
Jack D. Clodfelter
Tommy J. Cross, Jr.
Eric L. Dawson, III
Richard L. Derick
Craig E. Dorrance
Joseph A. Dunlap
Calvin J. Eldridge
Shawn B. Gaston
James F. Gereau
Ronald E. Goad
Reginald I. Hall
James O. Hancock
Sherman W. Hawk, Jr.
Robert C. Jeffres
Alfred C. Jewell, Jr.
Lewis V. McNeice
Kevin J. O'Donnell
Gregory M. Preves
James M. Rafferty
Paul C. Reagle, Sr.
Daniel Salinas
Wayne R. Sears
Lee R. Sidwell
David L. Slack
James C. Smith
Roger R. Strehlow
John T. Thomas
Brian W. Whitmer
Jeffrey D. Wilson
Larry M. Wink
William E. Woodhouse

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 34 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 54948; 65 FR 159; 67 FR 57266; 69 FR 52741; 71 FR 53489; 65 FR 20245; 65 FR 57230; 65 FR 33406; 65 FR 57234; 67 FR 46016; 67 FR 57267; 69 FR 51346; 71 FR 50970). Each of these 34 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by October 2, 2008.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 34 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would

otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: August 21, 2008.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E8–20223 Filed 8–29–08; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Preparation of an Environmental Impact Statement on Central Broward East-West Transit Analysis in Broward County, FL

**AGENCY:** Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

**SUMMARY:** The Federal Transit Administration (FTA) and the Florida Department of Transportation (FDOT) intend to prepare an Environmental Impact Statement (EIS) for the proposed Central Broward East-West public transportation improvements in Broward County, Florida, from Sawgrass Mills/Bank Atlantic Center in western Broward County, to the Fort Lauderdale-Hollywood International Airport in eastern Broward County, with the alignment located in the vicinity of Sawgrass Corporate Park, Interstate-595 (I–595), State Road 7 (SR 7), Broward Boulevard and Andrews Avenue. The EIS will be prepared in accordance with regulations implementing the National Environmental Policy Act (NEPA), as well as provisions of the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. The purpose of this Notice of Intent is to alert interested parties regarding the plan to prepare the EIS, to provide information on the nature of the proposed transit project, to invite participation in the EIS process, including comments on the scope of the EIS proposed in this notice, and to announce that public scoping meetings will be conducted.

**DATES:** *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to Mr. Scott Seeburger, Project Manager, by October 2, 2008. Addresses for the public scoping meetings are as follows.

**ADDRESSES:** *Written comments* on the project scope should be sent to Mr. Scott Seeburger, Project Manager, Florida Department of Transportation, 3400 West Commercial Boulevard, Fort Lauderdale, Florida 33309 (or by e-mail: *SCOTT.SEEBURGER @DOT.STATE.FL.US;* or by fax: (954) 777–4671).

Scoping meetings will be held at the following locations:

**Agency Coordination Meeting**

September 15, 2008, 2:30 p.m.–4:30 p.m., West Regional Library, Multi-Purpose Room, 8601 W. Broward Boulevard, Plantation, FL 33324.

**Public Meetings**

September 15, 2008, 5:30 p.m.–7:30 p.m., West Regional Library, Multi-Purpose Room, 8601 W. Broward Boulevard, Plantation, FL 33324.

September 17, 2008, 5:30 p.m.–7:30 p.m., African American Research Library, Seminar Rooms 1 & 2, 2650 Sistrunk Boulevard, Fort Lauderdale, FL 33311.

September 25, 2008, 6 p.m.–8 p.m., Broward General Medical Center, Auditoriums A & B, 1600 S Andrews Avenue, Fort Lauderdale, FL 33316.

These locations are accessible by persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact the Project Manager. The program includes a project Web site (*http://www.centralbrowardtransit.com*)

**FOR FURTHER INFORMATION CONTACT:** Jamie Pfister, State Programs Team Leader, Federal Transit Administration, 230 Peachtree, NW., Suite 800, Atlanta, Georgia 30303, Telephone: (404) 865–5600.

**SUPPLEMENTARY INFORMATION:**

**I. Scoping**

The Central Broward East-West Transit Analysis EIS will examine improved transit service in the Central Broward East-West Corridor between Sawgrass Mills/Bank Atlantic Center and the Fort Lauderdale-Hollywood International Airport through Downtown Fort Lauderdale. The FDOT and FTA invite interested individuals, organizations, Native American Tribes, and federal, state, and local agencies to participate in defining the purpose and need for, and refining the scope of the Central Broward East-West Transit Analysis DEIS. Comments should focus on identifying any significant social, economic, or environmental issues related to the proposed alternatives. Specific suggestions related to alignment configurations to be examined, issues to be addressed, and additional alternatives are welcome and will be considered in the final scope for the study. Scoping comments should focus on the issues for analysis. Comments may be made at the scoping meetings or in writing no later than October 2, 2008. See **DATES** and **ADDRESSES** above for meeting times and locations and the address for written comments. A scoping information packet is available from Scott Seeburger at the address given above or on the project Internet Web page at *http://www.centralbrowardtransit.com.* See **ADDRESSES** above.

**II. Description of Study Area and Project Purpose and Need**

The study area is located in Broward County, Florida. The corridor boundaries of the study area are in the central part of Broward County, bounded generally by Oakland Park Boulevard on the north, the Sawgrass Expressway/I–75 on the west, Griffin Road on the south, and the Intracoastal Waterway in the east.

Mobility issues in this corridor have been well documented in many studies, including the I–95/I–595 Master Plan, Tri-County Commuter Rail Authority 2020 Master Plan for Broward County, Interstate 595 Freeway Operational Analysis, and the Downtown Fort Lauderdale Transit Connector Study. The purpose of the Central Broward East-West Transit Corridor Project is to provide high-quality, high-capacity transit service on an east-west axis in central Broward County to connect the major commercial and retail centers, residential areas, and the highly dense coastal area. The introduction of premium transit service to the corridor would offer an alternative means of travel for the growing number of residents, employees, and visitors in Broward County and would improve mobility throughout the region. The proposed project would support continued economic growth and development along the corridor and would be able to meet the anticipated increases in travel demand and help reduce future congestion in the corridor. Moreover, increased mobility in the corridor with fewer numbers of vehicles should help to minimize future increases in vehicle miles traveled, fuel consumption, and vehicle emissions.

In a region where high capacity transportation facilities are primarily oriented north-south, the Central Broward East-West Corridor study area is Broward County's most important and heavily traveled east-west corridor. Much of the growth in recent years has occurred in the western portion of the county, which has seen rapid growth in population, households, and employment.

**III. Alternatives**

The transportation alternatives proposed for consideration in this study area include:

*No-Build Alternative*—the No Build Alternative would consist of the ''existing + committed'' network plus the transit elements as described in the 2030 LRTP without the Central Broward East-West Transit Analysis.

*Transportation System Management (TSM) Alternative or Baseline*—the proposed TSM alternative is comprised of the No Build Alternative plus a set of express bus routes and park-and-ride facilities that are designed to serve the same travel markets as the proposed CBEWTA build alternatives. The proposed TSM alternative was developed in consultation with staff members of Broward County Transit (BCT), the Broward County MPO, District 4 of the Florida Department of Transportation and the FTA.

*Build Alternative*—includes the construction of a light rail line that provides service from the Sawgrass Mills area through the Sawgrass Corporate Park in the City of Sunrise, along I–595, SR 7, Broward Boulevard, to Downtown Fort Lauderdale and the Fort Lauderdale-Hollywood International Airport Intermodal Center. This alternative has been endorsed by the Central Broward East-West Transit Analysis Steering Committee, the Technical Coordinating Committee of the MPO, and the MPO Board. It includes an alignment variation serving the City of Lauderdhill that will be evaluated in the EIS.

Numerous alternatives were evaluated in the Alternatives Analysis Study completed in 2005. The Alternatives Analysis used a four-phase evaluation process, including two levels of environmental, community, and transportation alternatives screening. The first evaluation was completed during the scoping phase of the study, when six initial alignment alternatives and eight modal alternatives (including express bus, bus rapid transit, high occupancy vehicle lanes, light rail transit, heavy rail transit, commuter rail transit, automated guideway transit, and monorail transit) were identified and evaluated using criteria that were primarily qualitative. The four alignment alternatives and two modal options (bus rapid transit, light rail transit) resulting from the scoping phase were further evaluated during the initial screening phase, where a qualitative assessment of quantitative data was completed. The same set of alternatives was then subjected to an advanced screening phase using refined criteria and a more quantitative process. The MPO then selected a generalized alignment, which was further evaluated during the fourth phase. This fourth round of evaluation was necessary in order to assist the MPO in deciding between the two recommended transit technologies, BRT and LRT, and to assess variations to portions of the recommended alignment. From this, the preferred Build Alternative described above, including an alignment variant, was selected by the MPO for detailed environmental analysis.

*Advanced Scoping Alternatives*—As a result of the completed Alternatives Analysis, a two-level environmental, community, and transportation screening resulted in the recommendation of a Locally Preferred Alternative (LPA):

- Light rail transit running along I–595 to SR 7 to Broward Boulevard to Andrews Avenue, terminating at Fort Lauderdale/Hollywood International Airport

The LPA will undergo additional environmental screening and impact analysis including variations of the LPA that are identified through the scoping process. This may include:

- I–595 to SR 84 to I–95 to Broward Blvd and along Andrews Avenue, terminating at Fort Lauderdale/Hollywood International Airport
- I–595 to SR 7 to Davie Boulevard with a connection to Broward Boulevard and along Andrews Avenue, terminating at Fort Lauderdale/Hollywood International Airport
- I–595 to Florida's Turnpike to Broward Boulevard and along Andrews Avenue, terminating at Fort Lauderdale/Hollywood International Airport
- I–595 to SR7 to Sunrise Boulevard to Broward Boulevard and along Andrews Avenue, terminating at Fort Lauderdale/Hollywood International Airport

Based on the Scoping results, Bus Rapid Transit may be further analyzed.

**IV. The EIS Process and the Role of Participating Agencies and the Public**

The purpose of the EIS process is to explore, in a public setting, potentially significant effects of implementing the proposed action and alternatives on the physical, human, and natural environment. Areas of investigation include, but are not limited to, land use, development potential, land acquisition and displacements, historic resources, visual and aesthetic qualities, air quality, noise and vibration, energy use, safety and security, and ecosystems, including threatened and endangered species. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified. Participating agency requirements of the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), are satisfied by FDOT's Efficient Transportation Decision Making (ETDM) Process. An invitation to become a participating agency, with the scoping information packet appended, will be extended to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project.

A comprehensive public involvement program has been developed and a public and agency involvement Coordination Plan will be created. The program includes a project Web site (*http://www.centralbrowardtransit.com*); outreach to local and County officials and community and civic groups; a public scoping process to define the issues of concern among all parties interested in the project; establishment of a community advisory committee and organizing periodic meetings with that committee; a public hearing on release of the draft environmental impact statement (DEIS); establishment of walk-in project offices in the corridor; and development and distribution of project newsletters.

The purposes of and need for the proposed project have been preliminarily identified in this notice. We invite the public and participating agencies to consider the preliminary statement of purposes of and need for the proposed project, as well as the alternatives proposed for consideration. Suggestions for modifications to the statement of purposes of and need for the proposed project and any other alternatives that meet the purposes of and need for the proposed project are welcomed and will be given serious consideration. Comments on potentially significant environmental impacts that may be associated with the proposed project and alternatives are also welcomed. There will be additional opportunities to participate in the scoping process at the public meetings announced in this notice.

FDOT is seeking New Starts funding for the proposed project under 49 U.S.C. 5309 and will therefore be subject to New Starts regulations (49 CFR Part

611). The New Starts regulation requires the submission of specific information in support of a request to initiate preliminary engineering, and this information is normally developed in conjunction with the NEPA process. Pertinent New Starts evaluation criteria will be included in the Final Environmental Impact Statement.

**V. FTA Procedures**

In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR Part 771), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), the Section 404(b)(1) guidelines of EPA (40 CFR part 230), the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR Part 800), the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402), Section 4(f) of the DOT Act (23 CFR 771.135), and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Issued on: August 25, 2008.

**Yvette G. Taylor,**

*Regional Administrator, FTA Region 4.*

[FR Doc. E8–20221 Filed 8–29–08; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2008–0081]**

### Information Collection Available for Public Comments and Recommendations

**ACTION:** Notice of intention to request extension of OMB approval and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

**DATES:** Comments should be submitted on or before November 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** Thomas Christensen, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5909; or e-mail: *tom.christensen@dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Effective U.S. Control (EUSC)/Parent Company.

*Type of Request:* Extension of currently approved information collection.

*OMB Control Number:* 2133–0511.

*Form Numbers:* None.

*Expiration Date of Approval:* Three years from date of approval by the Office of Management and Budget.

*Summary of Collection of Information:* The Effective U.S. Control (EUSC)/Parent Company collection consists of an inventory of foreign-registered vessels owned by U.S. citizens. Specifically, the collection consists of responses from vessel owners verifying or correcting vessel ownership data and characteristics found in commercial publications. The information obtained could be vital in a national or international emergency and is essential to the logistical support planning operations conducted by Maritime Administration officials.

*Need and Use of the Information:* The information is used in contingency planning and provides data related to potential sealift capacity to support movement of fuel and military equipment to crisis zones.

*Description of Respondents:* U.S. citizens who own foreign-registered vessels.

*Annual Responses:* 60 responses.

*Annual Burden:* 30 hours.

*Comments:* Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/indes.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/indes.jsp.*

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://www.regulations.gov/search/indes.jsp.*

**Authority:** 49 CFR 1.66.

Dated: August 22, 2008.

By order of the Maritime Administrator.

**Leonard Sutter,**

*Secretary, Maritime Administration.*

[FR Doc. E8–20230 Filed 8–29–08; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: 2008 0084]**

### Application of Foreign Underwriters To Write Marine Hull Insurance

The Maritime Administration has received an application under 46 CFR part 249 from Codan Forsikring A/S, a Denmark based underwriter, to write Marine hull insurance on vessels guaranteed under 46 U.S.C. Chapter 537 (formerly Title XI of the Merchant Marine Act of 1936, as amended).

In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to the Maritime Administration's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

You may submit comments regarding this information collection by any of the following methods:

a. *Web Site: www.regulations.gov* Following the instructions for submitting comments on the electronic docket site.

b. *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room PL–401, Washington, DC 20590–0001.

c. *Hand Delivery:* Room PL–410 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC. Between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

d. *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the outline instructions.

*Instruction:* All submissions must include the agency name and the docket number for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room PL–401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Dated: August 26, 2008.

By order of the Maritime Administrator.

**Leonard Sutter,**

*Secretary, Maritime Administration.*

[FR Doc. E8–20197 Filed 8–29–08; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: MARAD 2008 0085]**

### Application of Foreign Underwriters To Write Marine Hull Insurance

The Maritime Administration has received an application under 46 CFR part 249 from Fortis Corporate Insurance N.V., a Netherlands based underwriter, to write Marine hull insurance on vessels guaranteed under 46 U.S.C. Chapter 537 (formerly Title XI of The Merchant Marine Act of 1936, as amended). In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to the Maritime Administration's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

You may submit comments regarding this information collection by any of the following methods:

a. *Web site: www.regulations.gov.* Following the instructions for submitting comments on the electronic docket site.

b. *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room PL–401, Washington, DC 20590–0001.

c. *Hand Delivery:* Room PL–410 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC. Between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

d. *Federal E-Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the outline instructions.

*Instruction:* All submissions must include the agency name and the docket number for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room PL–401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Dated: August 26, 2008.

By order of the Maritime Administrator.

**Leonard Sutter,**

*Secretary, Maritime Administration.*

[FR Doc. E8–20198 Filed 8–28–08; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2008 0082]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel L'ESPRIT LIBRE II.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0082 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before October 2, 2008.

**ADDRESSES:** Comments should refer to docket number MARAD–2008–0082. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel L'ESPRIT LIBRE II is:

*Intended Use:* ''charter.''

*Geographic Region:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Puerto Rico, Virgin Islands, and Caribbean.''

### Privacy Act

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

Dated: August 25, 2008.

By order of the Maritime Administrator.

**Leonard Sutter,**

*Secretary, Maritime Administration.*

[FR Doc. E8–20196 Filed 8–29–08; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Research and Innovative Technology Administration

**[Docket: RITA 2007–27185]**

### Agency Information Collection; Activity Under OMB Review; Report of Traffic and Capacity Statistics—The T–100 System

**AGENCY:** Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 5, 2008 (73 FR 32078). The Commerce Department's Bureau of Economic Analysis filed a letter strongly supporting the continuation of the T–100 System.

**DATES:** Written comments should be submitted by October 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Bernie Stankus, Office of Airline Information, RTS–42, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### Bureau of Transportation Statistics (BTS)

*Title:* Report of Traffic and Capacity Statistics—The T–100 System.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2138–0040.

*Forms:* Schedule T–100 and T–100(f).

*Affected Public:* Certificated, commuter and foreign air carriers.

*Abstract:* T–100 reports are used to measure the air transportation activity to, from and within the United States.

*Estimated Annual Burden Hours:* 18,000.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 USC 3501), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department concerning consumer protection. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**M. Clay Moritz, Jr.,**

*Acting Assistant Director, Airline Information.*

[FR Doc. E8–20233 Filed 8–29–08; 8:45 am]

**BILLING CODE 4910–FE–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–1019X]**

### Transit America, LLC—Abandonment Exemption—in Buchanan County, MO

On August 13, 2008, Transit America, LLC (TA) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon approximately 2 miles of a rail line known as the Missouri Branch Line, between approximately milepost 200.4 and milepost 198.4, in St. Joseph, Buchanan County, MO. The line traverses U.S. Postal Service ZIP Codes 64503 and 64507, and includes no stations.

The line does not contain Federally granted rights-of-way. Any documentation in TA's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 1, 2008.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).[1]

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.[2] Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 22, 2008. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–1019X, and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Brendon P. Fowler, 1601 K St., NW., Washington, DC 20006. Replies to TA's petition are due on or before September 22, 2008.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal

[1] Effective July 18, 2008, the filing fee for an OFA increased to $1,500. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 Update*, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

[2] TA states that it intends to convey the involved trackage to its affiliate Herzog Contracting Corp. (HCC), which will use the trackage to provide non-common carrier switching service in order to continue and expand operations at its shop facilities.

Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: August 25, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. E8–20218 Filed 8–29–08; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund; Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the ''Fund'') within the Department of the Treasury is soliciting comments concerning the Bank Enterprise Award (''BEA'') Program Application.

**DATES:** Written comments should be received on or before November 3, 2008 to be assured of consideration.

**ADDRESSES:** Direct all comments to Jodie Harris, Depository Institutions Program Advisor, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 622–7754. This is not a toll free number.

**FOR FURTHER INFORMATION CONTACT:** The BEA Program application may be obtained from the BEA page of the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Jodie Harris, Depository Institutions Program Advisor, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–6355. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:**

*Title:* Bank Enterprise Award Program Application.

*OMB Number:* 1559–0005.

*Abstract:* The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance, within distressed communities and provide financial assistance to community development financial institutions through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. The Fund will make awards through the BEA Program to insured depository institutions, based upon such institutions' completion of certain qualified activities, as reported in the application. The application will solicit information concerning: applicants' eligibility to participate in the BEA Program; the quantity (value) of applicants' activities, and the extent to which such activities may be qualified activities; and appropriate supporting documentation. The questions that the application contains, and the information generated thereby, will enable the Fund to evaluate applicants' activities and determine the extent of applicants' eligibility for a BEA Program award.

*Current Actions:* New collection.

*Type of Review:* Regular review.

*Affected Public:* Insured depository institutions.

*Estimated Number of Respondents:* 60.

*Estimated Annual Time per Respondent:* 15 hours.

*Estimated Total Annual Burden Hours:* 900 hours.

*Requests for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and will be published on the CDFI Fund Web site at *http://www.cdfifund.gov. Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**Authority:** 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C 321; 12 CFR part 1806.

Dated: August 25, 2008.

**Donna J. Gambrell,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. E8–20182 Filed 8–29–08; 8:45 am]

BILLING CODE 4810–70–P

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Iraq is not included in this list, but its status with respect to future lists remains under review by the Department of the Treasury.

Dated: August 25, 2008.

**John L. Harrington,**

*International Tax Counsel (Tax Policy).*

[FR Doc. E8–20055 Filed 8–29–08; 8:45 am]

BILLING CODE 4810–25–M

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Privacy Act of 1974, as Amended

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of system of records.

**SUMMARY:** The Privacy Act of 1974, as amended, 5 U.S.C. 552a, requires all Federal agencies to publish their inventory of Privacy Act systems of records. In accordance with this requirement, and following a review of its records, the Alcohol and Tobacco Tax and Trade Bureau (TTB) is publishing its Privacy Act system of records.

**DATES:** Comments must be received no later than October 2, 2008. This new system of records will be effective October 14, 2008, unless TTB receives comments which would result in a contrary determination.

**FOR FURTHER INFORMATION CONTACT:** Gerry Isenberg, Assistant Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20005; phone 202–927–8210.

**ADDRESSES:** You may submit comments on this notice by one of the following two methods: *Federal e-Rulemaking Portal:* To submit a comment on this notice using the online Federal e-rulemaking portal, visit *http://www.regulations.gov* and select ''Alcohol and Tobacco Tax and Trade Bureau'' from the agency drop-down menu and click ''Submit.'' In the resulting docket list, open the docket containing this notice, click on the ''Add Comments'' icon for this notice, and complete the resulting comment form. You may attach supplemental files to your comment. A direct link to the appropriate docket is also available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml*. More complete information on using Regulations.gov, including instructions for accessing open and closed dockets and for submitting comments, is available through the site's ''User Tips'' link.

*Mail:* You may send written comments to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. TTB will not accept anonymous comments. Your comments must be in English, legible, and written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *http://www.regulations.gov*, please enter the entity's name in the ''Organization'' blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

*Confidentiality:* All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

*Public Disclosure:* On the Federal e-rulemaking portal, TTB will post, and you may view, copies of this notice and any electronic or mailed comments TTB receives about this proposal. To view a posted document or comment, go to *http://www.regulations.gov* and select ''Alcohol and Tobacco Tax and Trade Bureau'' from the agency drop-down menu and click ''Submit.'' In the resulting docket list, click the appropriate docket number, then click the ''View'' icon for any document or comment posted under that docket number. A direct link to the docket containing this notice is also available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml*. All submitted and posted comments will display the commenter's name, organization (if any), city, and state, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You also may view copies of this notice and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5-× 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments or other materials.

**SUPPLEMENTARY INFORMATION:** Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the Department of Justice. ATF oversees firearms, explosives, and arson programs and administers laws pertaining to alcohol and tobacco smuggling and diversion. TTB is responsible for administering Chapters 51 (relating to distilled spirits, wine, and beer) and 52 (relating to tobacco products and cigarette papers and tubes) of title 26 of the United States Code (U.S.C.), which contains the Internal Revenue Code of 1986, as amended. TTB also administers sections 4181 and 4182 (relating to the excise tax on firearms and ammunition) of the Internal Revenue Code of 1986, and title 27 of the U.S.C. (relating to alcohol).

Section 1512 of the Homeland Security Act of 2002 authorized TTB to continue its operations under completed administrative actions taken by ATF until such actions are amended, modified, superseded, terminated, set aside, or revoked in accordance with law. As of January 24, 2003, the following Privacy Act systems of records notices were in effect for ATF records:

ATF .001–Administrative Record System;
ATF .002–Correspondence Record System;
ATF .003–Criminal Investigation Report System;
ATF .007–Personnel Record System;
ATF .008–Regulatory Enforcement Record System; and
ATF .009–Technical and Scientific Services Record System.

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget (OMB) Circular No. A–130, TTB has completed a review of its current records to determine what records are Privacy Act systems of records. TTB reviewed the established Government-wide Privacy Act system of records notices published by such agencies as the Equal Employment Opportunity Commission, the General Services Administration, the Merit Systems Protection Board, the Office of Government Ethics, and the Office of Personnel Management, and Treasury-wide systems of records notices.

As a result of this review, TTB has determined that the only Privacy Act system of records it maintains which is not covered by a Government-wide or Treasury-wide system of records notice is the ''Treasury/ATF .008–Regulatory Enforcement Record System.'' This system of records will be maintained by TTB under the new title ''Treasury/TTB

.001–Regulatory Enforcement Record System.'' TTB also determined that the following systems of records should be removed from the Department's Privacy Act systems of records inventory:

ATF .001–Administrative Record System;
ATF .002–Correspondence Record System;
ATF .003–Criminal Investigation Report System;
ATF .007–Personnel Record System; and
ATF .009–Technical and Scientific Services Record System.

An interim final rule amending 31 CFR 1.36 to reflect the removal of the ATF .003, ATF .007, and ATF .009 from the list of exempt systems, and the redesignation of ATF .008–Regulatory Enforcement Record System, will be published separately in the **Federal Register**. Note that while ATF. 001 and ATF .002 are part of the current Department of the Treasury systems of records inventory and are being deleted from that inventory pursuant to this notice, these two systems are not part of the list of exempt systems of records in 31 CFR 1.36. Therefore, these two systems are not included in the interim rule amendment of § 1.36.

The report of the revised system of records, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed revisions to the system of records entitled ''Treasury/TTB .001–Regulatory Enforcement Record System'' are published in their entirety below.

Dated: July 23, 2008.

**Peter B. McCarthy,**

*Assistant Secretary for Management and Chief Financial Officer.*

## TREASURY/TTB .001

### SYSTEM NAME:

Regulatory Enforcement Record System.

### SYSTEM LOCATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB), 1310 G Street, NW., Washington, DC 20005. Components of this system of records are also geographically dispersed throughout TTB's field offices. A list of TTB's field offices is available on the TTB Web site at *http://www.ttb.gov.*

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who file tax returns or submit return information to TTB regarding special occupational tax and excise taxes on alcohol, tobacco, and firearms and ammunition; and

(2) Individuals who have been issued permits or licenses, have filed applications with TTB, or have registered with TTB. They include (a) Alcohol and tobacco licensees and (b) Claimants for refund, abatement, credit, allowance, or drawback of excise or special occupational taxes.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing investigative material compiled for TTB's responsibilities to collect the revenue and protect the public which may consist of the following: (1) Abstracts of offers in compromise; (2) Administrative law judge decisions; (3) Assessment records including notices of proposed assessments, notices of shortages or losses, copies of notices from IRS to assess taxes, and recommendations for assessments; (4) Claim records including claims, letters of claim rejection, sample reports, supporting data, and vouchers and schedules of payment; (5) Correspondence concerning records in this system and related matters; (6) Financial statements; (7) Inspection and investigation reports; (8) Demands for payment of excise tax liabilities; (9) Letters of reprimand; (10) Lists of permittees and licensees; (11) Lists of officers, directors, and principal stockholders; (12) Mailing lists and addressograph plates; (13) Notices of delinquent reports; (14) Offers in compromise; (15) Operational records, such as operating and inventory reports, and transaction records and reports; (16) Orders of revocation, suspension, or annulment of permits or licenses; (17) District and Chief Counsel opinions and memoranda; (18) Reports of violations; (19) Permits and permit histories; (20) Qualifying records including access authorizations, advertisement records, applications, business histories, criminal records, educational histories, employment histories, financial data, formula approvals, licenses, notices, permits, personal references, registrations, sample reports, special permissions and authorizations, and statements of process; (21) Show cause orders; and (22) Tax records including control cards relating to periodic payment and prepayment of taxes, tax returns, and notices of tax discrepancy or adjustment.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 5001, 5006(a), 5008, 5041, 5042(a)(2) and (3), 5044, 5051, 5055, 5056, 5061, 5062, 5064, 5101, 5132, 5172, 5179(a), 5181, 5271(b)(1), 5275, 5301(a) and (b), 5312, 5356, 5401, 5417, 5502, 5511(3), 5705, 5712, 6001, 6011(a), 6201, 6423, 7011, and 7122; 27 U.S.C. 204 and 207; and Homeland Security Act of 2002.

### PURPOSE(S):

The purpose of this system is to determine suitability, eligibility, or qualifications of individuals who are engaged or propose to engage in activities regulated by TTB; achieve compliance with laws under TTB's jurisdiction; assure full collection of revenue due from legal industries; eliminate commercial bribery, consumer deception, and other improper trade practices in the distilled spirits, beer, and wine industries; and interact with Federal, State, and local governmental agencies in the resolution of problems relating to revenue protection, public health, and other areas of joint jurisdictional concern.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

Routine uses of records within this system pursuant to which a record may be disclosed are to:

(1) Third parties when such disclosure is required by statute or Executive Order;

(2) Third parties to the extent necessary to collect or verify information pertinent to the Bureau's decision to grant, deny, or revoke a license or permit; to initiate or complete an investigation of violations or alleged violations of laws and regulations administered by the Bureau;

(3) Appropriate Federal, State, local, or foreign agencies for the purpose of enforcing administrative, civil, or criminal laws; hiring or retention of an employee; issuance of a security clearance, license, contract, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter;

(4) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(5) INTERPOL and similar national and international intelligence gathering

organizations for the purpose of identifying international and national criminals involved in consumer fraud, revenue evasion, crimes, or persons involved in terrorist activities;

(6) Foreign governments in accordance with formal or informal international agreements;

(7) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of criminal law or regulation;

(8) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(9) The news media to provide information in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(10) Third parties for a purpose consistent with any permissible disclosure of returns or return information under the Internal Revenue Code of 1986, as amended; and

(11) Appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(12) Disclose information to a contractor for the purpose of processing administrative records and/or compiling, organizing, analyzing, programming, or otherwise refining records subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(13) The Department of Justice when seeking legal advice or when (a) the Department of the Treasury or (b) the disclosing agency, or (c) any employee of the disclosing agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the disclosing agency determines that litigation is likely to affect the disclosing agency, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; and

(14) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in file folders in filing cabinets and in electronic media.

**RETRIEVABILITY:**

Records are retrievable by name, by permit or license number, by document locator number, or by employer identification number (EIN).

**SAFEGUARDS:**

Direct access is restricted to personnel in the Department of the Treasury in the performance of their duties. Records are stored in file cabinets in rooms locked during nonduty hours. The records stored in electronic media are password protected and encrypted. Disclosures are made to routine users on a ''need to know'' basis and upon verification of the substance and propriety of the request.

**RETENTION AND DISPOSAL:**

The Alcohol and Tobacco Tax and Trade Bureau maintains records according to the ATF Order 1345.1 (10/29/1991; updated 4/5/2002) that the National Archives and Records Administration (NARA) approved. We are in the process of requesting approval for a new TTB Records Control Schedule. Records not currently covered by our approved record retention schedule will not be disposed of until TTB receives approval from NARA. Some of the records are retained in accordance with General Records Schedules numbers 1 through 27 issued by NARA.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau, 550 Main Street, Suite 8002, Cincinnati, OH 45202.

**NOTIFICATION PROCEDURE:**

This system of records has been determined to be exempt from compliance with the notification provisions of 5 U.S.C. 552a(e)(4)(G).

**RECORD ACCESS PROCEDURES:**

This system of records has been determined to be exempt from compliance with the access provisions of 5 U.S.C. 552a(e)(4)(H).

**CONTESTING RECORD PROCEDURES:**

This system of records has been determined to be exempt from compliance with the provisions of 5 U.S.C. 552a(e)(4)(H) allowing an individual to contest the contents of records.

**RECORD SOURCE CATEGORIES:**

This system of records has been determined to be exempt from compliance with the provisions of 5 U.S.C. 552a(e)(4)(I) requiring the record source categories be reported.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

This system has been designated as exempt from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). See 31 CFR 1.36.

[FR Doc. E8–20202 Filed 8–29–08; 8:45 am]

**BILLING CODE 4810–31–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789 and 9789(SP)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789 and 9789(SP), Electronic Federal Tax Payment System (EFTPS).

**DATES:** Written comments should be received on or before November 3, 2008 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue

Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to Carolyn N. Brown, (202) 622–6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Carolyn.N.Brown@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title*: Electronic Federal Tax Payment System (EFTPS).

*OMB Number*: 1545–1467.

*Form Number*: Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789 and 9789(SP).

*Abstract*: These forms are used by business and individual taxpayers to enroll in the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system that the Service uses to accept electronically transmitted federal tax payments. EFTPS (1) establishes and maintains a taxpayer data base which includes entity information from the taxpayers or their banks, (2) initiates the transfer of the tax payment amount from the taxpayer's bank account, (3) validates the entity information and selected elements for each taxpayer, and (4) electronically transmits taxpayer payment data to the IRS.

*Current Actions*: Form 12252 was obsoleted, resulting in a decrease of 167 burden hours. The new burden hours are 766,446.

*Type of Review:* Revision of a currently approved collection.

*Affected Public*: Individuals, business or other for-profit organizations, and state, local or tribal governments.

*Estimated Number of Respondents:* 4,470,000.

*Estimated Time per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 766,446.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments*: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 25, 2008.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E8–20204 Filed 8–29–08; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 13997

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13997, Validating Your TIN and Reasonable Cause.

**DATES:** Written comments should be received on or before *November 3, 2008* to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title*: Validating Your TIN and Reasonable Cause.

*OMB Number:* 1545–XXXX.

*Form Number:* Form 13997.

*Abstract*: Under the provisions of Internal Revenue Code Section (IRC § ) 6039E, Information Concerning Resident Status, individuals are required to provide certain information (see IRC § 6039E(b)) with their application for a U.S. passport or with their application for permanent U.S. residence. This form will be an attachment to Letter 4318 that is being drafted to inform the individual about the IRC provisions, the penalty, and to request them to complete this form and return it to the IRS.

*Current Actions*: This is a new collection. There are no changes being made to the form at this time.

*Type of Review:* New collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 2,000.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 2,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments*: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on*: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 26, 2008.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E8–20206 Filed 8–29–08; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Members of Senior Executive Service Performance Review Boards

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to publish the names of those IRS employees who will serve as members on IRS' Fiscal Year 2008 Senior Executive Service (SES) Performance Review Boards.

**DATES:** This notice is effective October 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Nina C. Gresham, 1111 Constitution Avenue, NW., Room 3516, Washington, DC 20224, (202) 927–7409.

**SUPPLEMENTARY INFORMATION:** Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members to the Internal Revenue Service's SES Performance Review Boards. The names and titles of the executives serving on the boards follow:

Linda E. Stiff, Deputy Commissioner for Services and Enforcement.
Brady Bennett, Director, Filing and Payment Compliance (W&I).
Andrew Buckler, Associate CIO, Enterprise Services (MITS).
Robert Buggs, IRS Human Capital Officer.
Richard E. Byrd, Commissioner, Wage and Investment.
Susan W. Carroll, Director, Customer Assistance, Relationships and Education (W&I).
Michael Chesman, Director, Office of Professional Responsibility.
Michael V. Culpepper, Director, Human Resources (SB/SE).
Harry Curry, Associate CIO, End Users Equipment and Services (MITS).
Jonathan Davis, Chief of Staff, Office of the Commissioner.
Paul DeNard, Deputy Commissioner (Operations), Large and Mid-Size Business.
Alison L. Doone, Chief Financial Officer.
James P. Falcone, Chief, Agency-Wide Shared Services.
Faris Fink, Director, Acting Deputy Commissioner, Small Business/Self Employed.
Gina Garza, Associate CIO, Applications Development (MITS).
Linda K. Gilpin, Associate CIO, Customer Relationship and Service Delivery (MITS).
Arthur L. Gonzalez, Chief Information Officer.
Joseph Grant, Deputy Division Commissioner, Tax Exempt and Government Entities.
James M. Grimes, Director, Compliance (W&I).
Sarah Hall Ingram, Chief, Appeals.
Kathy Jantzen, Deputy Chief Information Officer for Operations (MITS).
Robin DelRey Jenkins, Director, Business Systems Planning (SB/SE).
Michael D. Julianelle, Director, Employee Plans (TEGE).
Gregory Kane, Deputy Chief Financial Officer.
Frank Keith, Chief, Communications and Liaison.
Lois G. Lerner, Director, Exempt Organizations (TEGE).
Erick Martinez, Director of Field Operations, Pacific Area (CI).
Eileen C. Mayer, Chief, Criminal Investigation.
Mark J. Mazur, Director, Research, Analysis, and Statistics.
David L. Medeck, Business Modernization Executive (W&I).
Moises Medina, Director, Government Entities (TEGE).
Kurt Meier, Deputy Chief, Appeals.
Steven T. Miller, Commissioner, Tax Exempt and Government Entities.
Frank Y. Ng, Commissioner, Large and Mid-Size Business.
Robert Odenheimer, Associate CIO, Enterprise Operations (MITS).
Nina E. Olson, National Taxpayer Advocate.
Rick Raven, Director, Operations Policy and Support (CI).
Kenneth M. Riccini, Associate CIO, Enterprise Networks (MITS).
Julie Rushin, Director, Strategy and Finance (W&I).
Barry Schott, Deputy Division Commissioner (International), (LMSB).
Victor S.O. Song, Deputy Chief, Criminal Investigation.
David Stender, Associate CIO, Cybersecurity (MITS).
Peter J. Stipek, Director, Customer Accounts Services (W&I).
Michael Thomas, Director of Field Operations, Southeast Area (CI).
Dora A. Trevino, Acting Chief, EEO and Diversity.
Curt Turner, Associate CIO for Management (MITS).
Christopher Wagner, Acting Commissioner, Small Business/Self Employed.
Norris Walker, Director, Physical Security and Emergency Preparedness (AWSS).
Pamela Watson, Deputy Commissioner, Wage and Investment.
Stephen Whitlock, Director, Whistleblower Office.
David Williams, Director, Electronic Tax Administration and Refundable Credits (W&I).
Debbie G. Wolf, Director, Office of Privacy, Information Protection and Data Security.

This document does not meet the Department of the Treasury's criteria for significant regulations.

Dated: August 25, 2008.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement, Internal Revenue Service.*

[FR Doc. E8–20203 Filed 8–29–08; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of amendment of system of records ''VA Compensation, Pension, Education and Rehabilitation Records—VA.

**SUMMARY:** As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), notice is hereby given that the Department of Veterans Affairs (VA) proposes to add one routine use to the system of records ''VA Compensation, Pension, Education and Rehabilitation Records—VA (58VA21/22/28).''

**DATES:** Comments on routine uses must be received no later than October 2, 2008, on or before October 2, 2008. If no public comment is received during the period allowed for comments, the routine use will become effective October 2, 2008.

**ADDRESSES:** Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the

hours of 8 a.m. and 4:30 p.m., Monday through Friday (except Federal holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Whitworth, Procedures Analyst, Compensation and Pension Service, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–9652.

**SUPPLEMENTARY INFORMATION:** Based upon recommendations made by The President's Commission on care for America's Returning Wounded Warriors; The Wounded, Ill, and Injured Senior Oversight Committee (WII–SOC); and a joint DoD/VA committee, approved ''Modernizing and Improving the Disability and Compensation Systems.'' This requires implementation of Disability Evaluation/Transition Medical Examinations in the Disability Evaluation System (DES) and VA Disability Compensation & Pension Determinations. VA proposes to add a new routine use to 58VA21/22 under which to disclose identifying information determined necessary to support a mutually beneficial relationship between the DoD and VA in the implementation of a streamlined disability evaluation and compensation process. This initiative includes an interagency single Disability Evaluation/Transition examination in the DES process and applies to the examination, and subsequent VA rating decision, of active duty personnel and reserve component members (with duty related medical impairments) that are referred to the DoD DES. VA has determined that the release of information for this purpose is necessary for the proper use of the information in this system of records, and that the new specific routine use for release of this information is appropriate.

VA proposes to add this routine use to the following system of records which is contained in the **Federal Register**: VA Compensation, Pension, Education and Rehabilitation Records—VA (58VA21/22/28), first published at 41 FR 924 (March 3, 1976), and last amended at 73 FR 29181 (May 20, 2008), with other amendments as cited therein.

A ''Report of Altered System'' and an advance copy of the revised system have been sent to the chairmen and ranking minority members of the Committee on Government Reform of the U.S. House of Representatives and the Committee on Governmental Affairs of the U.S. Senate, and to the Office of Management and Budget, as required by 5 U.S.C. 552a(o) and guidelines issued by the Office of Management and Budget.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amended routine use statement to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All relevant material received within October 2, 2008, will be considered. All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

If no public comment is received during the 30-day review period allowed for public comment, or otherwise published in the **Federal Register** by VA, the new routine use is effective October 2, 2008.

Approved: August 18, 2008.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

**58VA21/22/28**

**SYSTEM NAME:**

Compensation, Pension, Education and Rehabilitation Records—VA.

1. In the system identified as 58VA21/22/28 ''Compensation, Pension, Education, and Rehabilitation Records,'' first published at 41 FR 924 (March 3, 1976), and last amended at 73 FR 29181 (May 20, 2008), with other amendments as cited therein, the following routine use is added:

**SYSTEM NAME:**

Compensation, Pension, Education and Rehabilitation Records.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

* * * * *

(70) Any information contained in this system may be disclosed by VA as deemed necessary to DoD for use by the Medical Evaluation Board (MEB) or Physical Evaluation Board (PEB) for determinations required by DoD. VA will routinely use the information to conduct medical evaluations needed to produce VA disability ratings and to promulgate subsequent claims for benefits under Title 38 U.S.C.

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[FR Doc. E8–20219 Filed 8–29–08; 8:45 am]

BILLING CODE 8320–01–P

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**Federal Register**

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## CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT SEPTEMBER 2, 2008

**COMMERCE DEPARTMENT**

**Industry and Security Bureau**

Addition of Kosovo in Export Administration Regulations; published 9-2-08

**ENVIRONMENTAL PROTECTION AGENCY**

Approval and Promulgation of State Implementation Plans:

Idaho; published 8-1-08

California State Implementation Plan:

South Coast Air Quality Management District; published 7-3-08

**FEDERAL COMMUNICATIONS COMMISSION**

Inflation Adjustment of Maximum Forfeiture Penalties; published 7-31-08

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Supervisory Guidance; Supervisory Review Process of Capital Adequacy (Pillar 2) Related to:

Implementation of the Basel II Advanced Capital Framework; published 7-31-08

**FEDERAL RESERVE SYSTEM**

Supervisory Guidance; Supervisory Review Process of Capital Adequacy (Pillar 2) Related to:

Implementation of the Basel II Advanced Capital Framework; published 7-31-08

**SECURITIES AND EXCHANGE COMMISSION**

Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers; published 7-2-08

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness Directives:

Bombardier Model DHC 8 400 Series Airplanes; published 8-15-08

Cessna Aircraft Company Models 175 and 175A Airplanes; published 7-29-08

PZL Swidnik S.A. Model W-3A Helicopters; published 8-15-08

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments; published 9-2-08

**TREASURY DEPARTMENT**

**Comptroller of the Currency**

Supervisory Guidance:

Supervisory Review Process of Capital Adequacy (Pillar 2) Related to Implementation of the Basel II Advanced Capital Framework; published 7-31-08

**TREASURY DEPARTMENT**

Privacy Act; Implementation; published 9-2-08

**TREASURY DEPARTMENT**

**Thrift Supervision Office**

Supervisory Guidance; Supervisory Review Process of Capital Adequacy (Pillar 2) Related to:

Implementation of the Basel II Advanced Capital Framework; published 7-31-08

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Forest Service**

Sensitive Species and Endangered Species Act Section 7 Consultation Policy for National Forest System Land Management Planning under the 2008 Planning Rule; comments due by 9-8-08; published 8-8-08 [FR E8-18283]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Magnuson-Stevenson Act Provisions:

Annual Catch Limits; National Standard Guidelines; comments due by 9-8-08; published 6-9-08 [FR 08-01328]

**ENVIRONMENTAL PROTECTION AGENCY**

Approval and Promulgation of Air Quality Implementation Plans:

Colorado; comments due by 9-8-08; published 8-7-08 [FR E8-16269]

Virginia; comments due by 9-8-08; published 8-7-08 [FR E8-18191]

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Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Outer Continental Shelf Air Regulations:

Consistency Update for California; comments due by 9-12-08; published 8-13-08 [FR E8-18735]

Pesticide Tolerances:

Azoxystrobin; comments due by 9-8-08; published 7-9-08 [FR E8-15517]

Gamma-cyhalothrin; comments due by 9-8-08; published 7-9-08 [FR E8-15518]

Sethoxydim; comments due by 9-8-08; published 7-9-08 [FR E8-15519]

Spirotetramat; comments due by 9-8-08; published 7-9-08 [FR E8-15521]

Tolerance Exemptions:

Ammonium Soap Salts of Higher Fatty Acids; comments due by 9-8-08; published 7-9-08 [FR E8-15516]

**FEDERAL COMMUNICATIONS COMMISSION**

New and Emerging Technologies 911 Improvement Act of 2008; Implementation; comments due by 9-9-08; published 8-28-08 [FR E8-20135]

Rules and Regulations Implementing the 1991 Telephone Consumer Protection Act; comments due by 9-12-08; published 7-14-08 [FR E8-15994]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities:

Speech-to-Speech and Internet Protocol (IP) Speech-to-Speech Telecommunications Relay Services; comments due by 9-12-08; published 8-13-08 [FR E8-18616]

Television Broadcasting Services:

Bangor, ME; comments due by 9-8-08; published 8-8-08 [FR E8-18359]

Honolulu, HI; comments due by 9-8-08; published 8-8-08 [FR E8-18357]

La Crosse, WI; comments due by 9-8-08; published 8-8-08 [FR E8-18358]

**FEDERAL TRADE COMMISSION**

Analyses of Agreements Containing Consent Orders to Aid Public Comment:

Sun Pharmaceutical Industries Ltd.; comments due by 9-11-08; published 8-20-08 [FR E8-19213]

**GENERAL SERVICES ADMINISTRATION**

General Services Acquisition Regulation:

GSAR Case 2006-G504; Rewrite of GSAR Part 516; Types of Contracts; comments due by 9-8-08; published 7-9-08 [FR E8-15587]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Special Local Regulations for Marine Events:

St. Leonard Creek, Patuxent River, Calvert County, MD; comments due by 9-8-08; published 8-7-08 [FR E8-18096]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and Threatened Wildlife and Plants:

12 Species of Picture-wing Flies from the Hawaiian Islands; comments due by 9-11-08; published 8-12-08 [FR E8-18519]

90-Day Finding on a Petition To List the U.S. Population of Coaster Brook Trout (Salvelinus fontinalis) as Endangered; comments due by 9-8-08; published 8-7-08 [FR E8-18206]

Proposed Removal of the Concho Water Snake (Nerodia paucimaculata) From the Federal List of Endangered and Threatened Wildlife, etc.; comments due by 9-8-08; published 7-8-08 [FR E8-15133]

Migratory Bird Hunting:

Proposed Frameworks for Late Season Migratory Bird Hunting Regulations; comments due by 9-8-08; published 8-29-08 [FR E8-20100]

**INTERIOR DEPARTMENT**

**Minerals Management Service**

Alternative Energy and Alternate Uses of Existing Facilities on the Outer

Continental Shelf; comments due by 9-8-08; published 7-9-08 [FR E8-14911]

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Alabama Regulatory Program; comments due by 9-8-08; published 8-8-08 [FR E8-18297]

Mississippi Regulatory Program; comments due by 9-10-08; published 8-26-08 [FR E8-19713]

**JUSTICE DEPARTMENT**

**Justice Programs Office**

Public Safety Officers' Benefits Program; comments due by 9-8-08; published 7-10-08 [FR E8-15730]

**JUSTICE DEPARTMENT**

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 9-12-08; published 7-14-08 [FR E8-15895]

**LABOR DEPARTMENT**

**Employee Benefits Security Administration**

Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans; comments due by 9-8-08; published 7-23-08 [FR E8-16541]

**LABOR DEPARTMENT**

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Conveyor Belt Combustion Toxicity and Smoke Density; comments due by 9-8-08; published 8-21-08 [FR E8-19391]

Safety Standards Regarding the Recommendations of the Technical Study Panel on the Utilization of Belt Air and the Composition and Fire Retardant Properties; comments due by 9-8-08; published 6-19-08 [FR E8-13631]

**LABOR DEPARTMENT**

**Wage and Hour Division**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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**H.R. 4040/P.L. 110–314**

Consumer Product Safety Improvement Act of 2008 (Aug. 14, 2008; 122 Stat. 3016)

**H.R. 4137/P.L. 110–315**

Higher Education Opportunity Act (Aug. 14, 2008; 122 Stat. 3078)

**H.R. 6432/P.L. 110–316**

To amend the Federal Food, Drug, and Cosmetic Act to revise and extend the animal drug user fee program, to establish a program of fees relating to generic new animal drugs, to make certain technical corrections to the Food and Drug Administration Amendments Act of 2007, and for other purposes. (Aug. 14, 2008; 122 Stat. 3509)

**Last List August 14, 2008**

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## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.

## TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 2008

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| Date of FR publication | 15 days after publication | 30 days after publication | 45 days after publication | 60 days after publication | 90 days after publication |
|---|---|---|---|---|---|
| September 2 | Sep 17 | Oct 2 | Oct 17 | Nov 3 | Dec 1 |
| September 3 | Sep 18 | Oct 3 | Oct 20 | Nov 3 | Dec 2 |
| September 4 | Sep 19 | Oct 6 | Oct 20 | Nov 3 | Dec 3 |
| September 5 | Sep 22 | Oct 6 | Oct 20 | Nov 4 | Dec 4 |
| September 8 | Sep 23 | Oct 8 | Oct 23 | Nov 7 | Dec 8 |
| September 9 | Sep 24 | Oct 9 | Oct 24 | Nov 10 | Dec 8 |
| September 10 | Sep 25 | Oct 10 | Oct 27 | Nov 10 | Dec 9 |
| September 11 | Sep 26 | Oct 14 | Oct 27 | Nov 10 | Dec 10 |
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| September 22 | Oct 7 | Oct 22 | Nov 6 | Nov 21 | Dec 22 |
| September 23 | Oct 8 | Oct 23 | Nov 7 | Nov 24 | Dec 22 |
| September 24 | Oct 9 | Oct 24 | Nov 10 | Nov 24 | Dec 23 |
| September 25 | Oct 10 | Oct 27 | Nov 10 | Nov 24 | Dec 24 |
| September 26 | Oct 14 | Oct 27 | Nov 10 | Nov 25 | Dec 26 |
| September 29 | Oct 14 | Oct 29 | Nov 13 | Nov 28 | Dec 29 |
| September 30 | Oct 15 | Oct 30 | Nov 14 | Dec 1 | Dec 29 |