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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0157]

Karnal Bunt; Removal of Regulated Areas in Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations to remove certain areas or fields in Baylor, Knox, Throckmorton, and Young Counties, TX, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. The interim rule was necessary to relieve restrictions that are no longer necessary.

DATES: Effective on September 5, 2008, we are adopting as a final rule the interim rule published at 73 FR 18701–18703 on April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Matthew H. Royer, Associate Director, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1234; (301) 734–7819.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule [1] effective and published in the **Federal Register** on April 7, 2008 (73 FR 18701–18703, Docket No. APHIS–2007–0157), we amended the Karnal bunt regulations contained in Subpart-Karnal Bunt (7 CFR 301.78 through 301.78–10) by removing certain areas or fields in Baylor, Knox, Throckmorton, and Young Counties, TX, from the list of regulated areas in § 301.89–3(g). That action was based on our determination that these fields or areas are eligible for release from regulations under the criteria in § 301.89–3(f). The interim rule relieved restrictions on fields within those areas that were no longer necessary.

Comments on the interim rule were required to be received on or before June 6, 2008. We received one comment by that date, from a State agricultural agency. The commenter supported the action taken in the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 73 FR 18701–18703 on April 7, 2008.

Done in Washington, DC, this 29th day of August 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–20622 Filed 9–4–08; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0157.*

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3430

Competitive and Noncompetitive Non-formula Grant Programs—General Grant Administrative Provisions and Program-Specific Administrative Provisions for the Specialty Crop Research Initiative

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Interim rule; correction and comment period extension.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) published on August 1, 2008, an interim final rule concerning one set of administrative requirements that contain elements common to all of the competitive and noncompetitive non-formula grant programs the Agency administers. That document contained an invalid E-mail address for the submission of comments. This document adds a valid E-mail address and extends the comment period for 30 days.

DATES: The comment period for the interim rule published August 1, 2008 (73 FR 44897), effective August 1, 2008, is extended until October 30, 2008.

ADDRESSES: You may submit comments, identified by RIN 0524–AA28, by any of the following methods:

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

E-mail: Policy@csrees.usda.gov. Include Regulatory Information Number (RIN) number 0524–AA28 in the subject line of the message.

Fax: 202–401–7752.

Mail: Paper, disk or CD–ROM submissions should be submitted to Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2299, 1400 Independence Avenue, SW., Washington, DC 20250–2299.

Hand Delivery/Courier: Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 2258, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Erin Daly, Policy Section Leader, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2299, 1400 Independence Avenue, SW., Washington, DC 20250–2299; Voice: 202–401–3319; Fax: 202–401–7752; E-mail: *edaly@csrees.usda.gov*.

SUPPLEMENTARY INFORMATION: This correction is to replace an invalid E-mail address listed in the **ADDRESSES** section of the original document and to extend the comment period listed in the **DATES** section of the original document an additional 30 days. The correct address and comment submission instruction is: *E-mail: Policy@csrees.usda.gov.* Include Regulatory Information Number (RIN) number 0524–AA28 in the subject line of the message. The extended comment end period is October 30, 2008.

Done at Washington, DC, this 29th day of August, 2008.

Gale Buchanan,

Under Secretary, Research, Education, and Economics.

[FR Doc. E8–20562 Filed 9–4–08; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 080211156–8157–01]

RIN 0694–AE24

Clarification of the Classification of Crew Protection Kits on the Commerce Control List

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 clarify that crew protection kits used as protective cabs on construction equipment are on the Wassenaar Arrangement Munitions List and are correctly classified on the Commerce Control List in the entry that applies to construction equipment built to military specifications.

DATES: Effective date is September 5, 2008.

ADDRESSES: You may submit comments, identified by RIN 0694–AE24, by any of the following methods:

- *E-mail: rpd2@bis.doc.gov.* Include ''RIN 0694–AE24'' in the subject line of the message.
- *Fax:* 202–482–3355.
- *Hand Delivery/Courier:* U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AE24.

FOR FURTHER INFORMATION CONTACT: Gene Christiansen, Office of National Security and Technology Transfer Controls, telephone: (202) 482–2984.

SUPPLEMENTARY INFORMATION:

BIS is amending the Export Administration Regulations (EAR) to add the phrase ''crew protection kits'' to Export Control Classification Number (ECCN) 0A018.a. This ECCN is used to control items that are listed on the Wassenaar Arrangement Munitions List (WAML). Specifically, the WAML category ML–17.b lists construction equipment ''specially designed for military use.'' On the Commerce Control List (CCL), ECCN 0A018.a controls items listed in category ML–17.b as ''construction equipment built to military specifications.''

Recently, the Departments of Commerce, State, and Defense reviewed ECCN 0A018.a and concluded that although crew protection kits are covered by the phrase ''[c]onstruction equipment built to military specifications * * * and specially designed parts and accessories therefor'' as set forth in that ECCN, it would enhance the ECCN's clarity if crew protection kits were added explicitly to the ECCN's text. Crew protection kits are items that can be used as protective cabs on construction equipment to help protect crews operating in a military or otherwise hostile environment. To facilitate public understanding that crew protection kits are considered construction equipment built to military specifications, the Departments of Commerce, State, and Defense agreed to include specific reference to these kits in the descriptive text of ECCN 0A018.a.

Therefore, this regulation amends ECCN 0A018.a to include crew protection kits in the descriptive language of that paragraph. Moreover, this regulation makes slight changes to the language of ECCN 0A018.a to further clarify that the items listed are all considered to be construction equipment built to military specifications, and thus are all controlled by that ECCN. These changes do not create new export controls for crew protection kits.

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 by the Notice of July 23, 2008, 73 FR 43603 (July 25, 2008), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation contains a collection previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS expects that this rule will not change that burden hour estimate.

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

4. Pursuant to 5 U.S.C. 553(a)(1), the provisions of the Administrative Procedure Act requiring a notice of proposed rulemaking and the opportunity for public comment are waived, because this regulation involves a military or foreign affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act 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 via courier or via hand delivery to

Steven Emme, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Export Administration Regulations (15 CFR 730–774) are amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 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. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], ECCN 0A018 is amended by revising ''Items'' paragraph a. in the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]

* * * * *

0A018 Items on the Wassenaar Munitions List

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Construction equipment built to military specifications, including equipment specially designed for airborne transport; and specially designed parts and accessories for such construction equipment, including crew protection kits used as protective cabs;

* * * * *

Dated: August 29, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–20585 Filed 9–4–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9417]

RIN 1545–BE39

Farmer and Fisherman Income Averaging; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document corrects final and temporary regulations (TD 9417) that were published in the **Federal Register** on Tuesday, July 22, 2008 (73 FR 42522) relating to the averaging of farm and fishing income in computing income tax liability.

FOR FURTHER INFORMATION CONTACT: Amy Pfalzgraf, (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9417) that are the subject of this correction are under section 1301 of the Internal Revenue Code.

Need for Correction

As published, TD 9417 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9417), which were the subject of FR Doc. E8–16665, is corrected as follows:

On page 42522, column 2, in the preamble, under the caption ''For Further Information Contact'', line 2, the language ''Amy Pfalzgraf, (202) 622–4950 (not a'' is corrected to read ''Amy Pfalzgraf (202) 622–4960 (not a ''.

LaNita Van Dyke,

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

[FR Doc. E8–20555 Filed 9–4–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0902]

RIN 1625–AA87

Security Zone; Potomac River, Boundary Channel and Pentagon Lagoon, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of the Potomac River. This action is necessary to prevent terrorist acts and incidents immediately before, during and after a dedication ceremony held at The Pentagon on September 11, 2008. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: This rule is effective from 6 a.m. through 11 a.m. on September 11, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0902 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226–1791 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the publication of an NPRM is impracticable and contrary to the public interest as immediate action is necessary to protect The Pentagon, high-ranking United States officials and the public from security threats during a dedication ceremony on September 11, 2008. This temporary security zone of short duration is necessary to coordinate security operations and establish a secure environment.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to protect The Pentagon, high-ranking United States officials and the public by preventing waterborne acts of terrorism, which terrorists have demonstrated a capability to carry out. Immediate action is needed to defend against and deter these terrorist acts. Any delay in the effective date of this rule is contrary to public and national interests.

Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

The Captain of the Port Baltimore is establishing a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against The Pentagon, high-ranking United States officials and the public at large, and the surrounding waterfront areas and communities in the District of Columbia and Virginia. The security zone is necessary to safeguard life and property on the navigable waters immediately before, during, and after the scheduled event. This zone will help the Coast Guard prevent persons from bypassing the security measures established on shore during the event.

Discussion of Rule

On September 11, 2008, several high-ranking United States officials will gather at The Pentagon Memorial during an official dedication ceremony by the Department of Defense. The Pentagon Memorial honors victims of the 9/11 attack on The Pentagon. The ceremony will take place in The Pentagon South parking lot and at The Pentagon Memorial site. The event will begin at approximately 8 a.m.

The Coast Guard is establishing a temporary security zone on certain waters of the Potomac River in Washington, DC. This zone, within the Boundary Channel and Pentagon Lagoon, is bounded on the west by a line running north to south from points along the shoreline at 38°52′50″ N/077°03′25″ W, thence to 38°52′49″ N/077°03′25″ W; and bounded on the east by a line running northwest to southeast from points along the shoreline at 38°52′34″ N/077°02′48″ W, thence to 38°52′32″ N/077°02′46″ W. The zone is approximately 1,500 yards in length and will be in effect from 6 a.m. through 11 a.m. on September 11, 2008. Unauthorized persons in the area at the time this security zone is implemented must immediately proceed out of the zone. Except for public vessels and vessels at berth, mooring or at anchor, this rule temporarily requires all persons in the designated security zone as defined by this rule to immediately depart the security zone. Entry into this security zone is prohibited, unless specifically authorized by the Captain of the Port, Baltimore, Maryland. U.S. Coast Guard personnel will be provided to prevent the movement of unauthorized persons into the zone. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. There is no expected vessel traffic associated with commercial fishing during the 5-hour effective period, and vessels may seek permission and be granted from the Captain of the Port Baltimore to enter and transit the zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate, transit or anchor on the Potomac River, all waters of the Potomac River, within the Boundary Channel and Pentagon Lagoon, from shoreline to shoreline, bounded on the west by a line running north to south from points along the shoreline at 38°52′50″ N/077°03′25″ W, thence to 38°52′49″ N/077°03′25″ W; and bounded on the east by a line running northwest to southeast from points along the shoreline at 38°52′34″ N/077°02′48″ W, thence to 38°52′32″ N/077°02′46″ W, from 6 a.m. through 11 a.m. on September 11, 2008. This security zone will not have a significant economic impact on a substantial number of small entities, because it will be effective for only 5 hours and vessels may seek and be granted permission from the Captain of the Port Baltimore to enter and transit the zone.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–0902 to read as follows:

§ 165.T05–0902 Security Zone; Potomac River, Boundary Channel and Pentagon Lagoon, Washington, DC.

(a) *Definitions.* For the purposes of enforcement of this section, *Captain of the Port Baltimore* means the Commander, U.S. Coast Guard Sector Baltimore, Maryland and any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Commander, U.S. Coast Guard Sector Baltimore, Maryland to act as a designated representative on his behalf.

(b) *Regulated Area.* The following area is a security zone: All waters of the Potomac River, within the Boundary Channel and Pentagon Lagoon, from

shoreline to shoreline, bounded on the west by a line running north to south from points along the shoreline at 38°52′50″ N/077°03′25″ W, thence to 38°52′49″ N/077°03′25″ W; and bounded on the east by a line running northwest to southeast from points along the shoreline at 38°52′34″ N/077°02′48″ W, thence to 38°52′32″ N/077°02′46″ W (Datum NAD 1983).

(c) *Regulations.* (1) The general regulations governing security zones found in § 165.33 of this part apply to the security zone described in paragraph (b) of this section.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Captain of the Port Baltimore or his designated representative. Except for public vessels and vessels at berth, mooring or at anchor, all vessels in this zone are to depart the security zone.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore. To seek permission to transit the area, the Captain of the Port Baltimore can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 6 a.m. through 11 a.m. on September 11, 2008.

Dated: August 28, 2008.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. E8–20659 Filed 9–4–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0491; FRL–8379–6]

Linuron; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of linuron and its metabolites in or on lentils. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on lentils. This regulation establishes a maximum permissible level for residues of linuron in the food commodity, lentils. The time-limited tolerance expires and is revoked on December 31, 2011.

DATES: This regulation is effective September 5, 2008. Objections and requests for hearings must be received on or before November 4, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0491. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: *conrath.andrea@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

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

identify docket ID number EPA–HQ–OPP–2008–0491 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 4, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0491, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited tolerance for combined residues of the herbicide linuron, (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on lentils at 0.1 parts per million (ppm). This time-limited tolerance expires and is revoked on December 31, 2011. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the CFR.

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

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

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

III. Emergency Exemptions for Linuron on Lentils and FFDCA Tolerance

The applicants from Idaho and Washington petitioned for an emergency exemption, stating that the development of herbicide-resistant biotypes of prickly lettuce and mayweed chamomile has led to an emergency situation. After having reviewed the submissions, EPA determined that emergency conditions exist for these States, and that the criteria for an emergency exemption are met. EPA has authorized under FIFRA section 18 the use of linuron on lentils for control of mayweed chamomile and prickly lettuce in Idaho and Washington.

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

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

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes

exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerance for combined residues of linuron on lentils at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the time-limited tolerance follows.

A. Toxicological Endpoints

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

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

A summary of the toxicological endpoints for linuron used for human risk assessment can be found at *http://www.regulations.gov* in the document *Linuron Human Health Risk Assessment to Support a Section 18 Emergency Exemption for Use on Lentils in Washington and Idaho*, page 6 in docket ID number EPA–HQ–OPP–2008–0491.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to linuron, EPA considered exposure under the time-limited tolerance established by this action as well as all existing linuron tolerances in (40 CFR 180.184). EPA assessed dietary exposures from linuron in food as follows:

i. *Acute exposure*. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, for blended commodities, an average of the field trial data corrected for the maximum percent of crop treated (PCT) was used in the assessment. For non-blended or partially-blended commodities, all values from the field trials were included along with the use of maximum PCT. For the new use on lentils, field trial values were included and 100 PCT was assumed. For all commodities, residues reported at or below the analytical method limit of quantitation (LOQ) were incorporated into the assessment at the LOQ level. Concentration/reduction factors were incorporated for some commodities based on empirical data; for all other processed commodities, default processing factors were used. A single high end modeled peak surface water estimated drinking water concentration (EDWC) of 38 ppb was used as a point estimate for drinking water, and directly incorporated into the assessment. There were no significant toxicological effects attributable to a single exposure (dose) for the general population or any other population subgroups other than the population subgroup of females 13–49 years old. Therefore, only this subgroup was included in this assessment.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. For the chronic assessment, an average of the field trial data and PCT information were used to derive anticipated residue values. For the new use on lentils, the average of the field trial data was used and 100 PCT was assumed. Concentration/reduction factors were incorporated for some commodities based on empirical data; for all other processed commodities, default processing factors were used. The annual mean surface water estimate of 18 ppb was used as a chronic exposure estimate for drinking water and was directly incorporated into the dietary assessment.

iii. *Cancer*. Linuron has been classified as Group C chemical and quantification of human cancer risk is not required; therefore a cancer dietary risk assessment was not conducted.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

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

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

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as

required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

For the acute assessment the maximum PCT was used as follows: sorghum and soybean at 2.5%, and wheat and lentils at 100%. For the chronic assessment, the average PCT was used as follows: sorghum and soybean at 1%, and wheat and lentils at 100%. Although usage on wheat is likely negligible, since there were no usage data reported for this crop, a default of 100 PCT was used for both acute and chronic assessments, which is likely an overestimate.

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

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

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

Based on the Pesticide Root Zone Model /Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentration (EDWC) of linuron for acute exposures is estimated to be 38 ppb for surface water. For chronic exposures for non-cancer assessments the EDWC is estimated to be 18 ppb for surface water. Groundwater sources were not included in this assessment, as the EDWCs for this water source are minimal in comparison to surface water (0.7 ppb for both acute and chronic concentrations). Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For acute dietary risk assessment, the water concentration value of 38 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 18 ppb was used to assess the contribution to drinking water.

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

Linuron is not registered for any specific use patterns that would result in residential exposure.

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

EPA has not found linuron to share a common mechanism of toxicity with any other substances, and linuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that linuron does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

C. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. The data from the multi-generation reproduction study in rats show that linuron has weak affinity for androgen receptors and causes dose-related alterations in androgen-dependent reproductive organ development in male rats. While there is evidence of increased susceptibility seen in rats, the anti-androgenic effects of linuron are well established and there is a clear NOAEL for the effects. Further, the toxicity endpoint selected for risk assessment is protective of both the hematological effects seen (increased methemoglobin levels, selected as the chronic endpoint) as well as the anti-androgenic effects of linuron. EPA has determined that the available linuron database is adequate for assessing the potentially increased susceptibility of the young to linuron exposure and the possible need for a FQPA safety factor to protect the young from the effects of linuron.

3. *Conclusion*. EPA concludes that the FQPA safety factor of 10X is not warranted, and it is reduced to 1X for the following reasons:

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

i. The toxicity database for understanding the toxicity of linuron is complete.

ii. The information on linuron's effects on differentiating male reproductive system (antiandrogenic action) is well established, and the dose levels where these effects occur are known. A clear NOAEL was established for the effects on the reproductive system. At this time, the point of departure for risk assessment purposes is protective of the linuron's action on this target tissue (differentiating male reproductive system) as well as the hematological effects described in Unit IV.C.2.

iii. The linuron database does not show any neurotoxicity in all the submitted and published studies at doses as high as 100 mg/kg. The current developmental neurotoxicity (DNT) study focuses on the neurobehavioral and brain histological changes and will not provide additional information for understanding the toxicity of linuron; therefore, this study is no longer required.

iv. Exposure estimates are unlikely to underestimate risk.

v. There are no residual uncertainties identified in the exposure databases. For estimation of exposure, the analysis incorporated PCT estimates, which are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA believes that using these estimates will not underestimate the exposure and risks. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to linuron in drinking water. These assessments will not underestimate the exposure and risks posed by linuron.

D. Aggregate Risks and Determination of Safety

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

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. There were no significant toxicological effects attributable to a single exposure (dose) for the general population other than the population subgroup Females 13–49 Years Old; therefore only this population subgroup was included in this assessment. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to linuron will occupy 6.0% of the aPAD at the 99.9th percentile of exposure distribution for Females 13–49 Years Old.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to linuron from food and water will utilize 22% of the cPAD for All Infants, the population subgroup receiving the greatest exposure. There are no residential uses for linuron. For the general U.S. population the existing and new uses for linuron resulted in an estimated chronic dietary exposure and risk equivalent to 7% of the cPAD.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Linuron is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to linuron through food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Linuron is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to linuron through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. Linuron has been classified as Group C carcinogen and quantification of human cancer risk is not required.

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

V. Other Considerations

A. Analytical Enforcement Methodology

The Pesticide Analytical Manual (PAM) Vol. II lists a colorimetric method (Method I) and a paper chromatographic method (Method II) for the enforcement of tolerances for linuron residues. Residues of diuron may interfere in Method I. A modified version of Method I (H. L. Pease, Journal of Agric. and Food Chem., 1962, Vol. 10, p. 279), which includes a cellulose column step to separate linuron from diuron, has been used for tolerance enforcement purposes. Both these methods determine linuron and all metabolites hydrolyzable to 3,4-dichloroaniline and have limits of detection of 0.05 ppm and are adequate to enforce the tolerance expression.

B. International Residue Limits

There are no Codex MRLs for linuron on lentils.

VI. Conclusion

Therefore, a time-limited tolerance is established for combined residues of linuron, (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on lentil at 0.1 ppm. This tolerance expires and is revoked on December 31, 2011.

VII. Statutory and Executive Order Reviews

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

Populations (59 FR 7629, February 16, 1994).

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 22, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.184 revise paragraph (b) to read as follows:

§ 180.184 Linuron; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for combined residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. The tolerance expires and is revoked on the date specified in the table.

Commodity	Parts per million	Expiration/ revocation date
Lentil	0.1	12/31/2011

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0549; FRL–8378–2]

Chlorantraniliprole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of chlorantraniliprole in or on various sweet corn commodities and in milk. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sweet corn. This regulation establishes maximum permissible levels for residues of chlorantraniliprole in or on these food commodities. The time-limited tolerances expire and are revoked on December 31, 2011.

DATES: This regulation is effective September 5, 2008. Objections and requests for hearings must be received on or before November 4, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0549. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Marcel Howard, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6784; e-mail address: *howard.marcel@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or

pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0549 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 4, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0549, by one of the following methods:

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

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing time-limited tolerances for residues of the insecticide chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide), in or on corn, sweet, kernel plus cob with husks removed at 0.01 parts per million (ppm); corn, sweet, forage at 6.0 ppm; corn, sweet, stover at 6.0 ppm; corn, sweet, cannery waste at 6.0 ppm; and milk at 0.03 ppm. These time-limited tolerances expire and are revoked on December 31, 2011. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the CFR.

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

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

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

III. Emergency Exemption for Chlorantraniliprole on Sweet Corn and FFDCA Tolerances

The states of Illinois and Minnesota requested the use of chlorantraniliprole, formulated as the product Coragen (EPA Reg. No. 352–729), on sweet corn to control corn earworms. According to these states, the available registered alternatives were not providing adequate control of this pest and without the use of Coragen, growers would suffer significant economic losses. After having reviewed the submission, EPA determined that emergency conditions exist for these States, and that the criteria for an emergency exemption are met. EPA has authorized under FIFRA section 18 the use of chlorantraniliprole on sweet corn for control of corn earworm in Illinois and Minnesota.

As part of its evaluation of the emergency exemption applications, EPA assessed the potential risks presented by residues of chlorantraniliprole in or on sweet corn and various associated sweet corn-related commodities. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA

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

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

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of these emergency exemption requests and the time-limited tolerances for residues of chlorantraniliprole on corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, forage at 6.0 ppm; corn, sweet, stover at 6.0 ppm; corn, sweet, cannery waste at 6.0 ppm; and milk at 0.03 ppm. EPA's assessment of exposures and risks associated with establishing these time-limited tolerances follows.

A. Toxicological Endpoints

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

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

A summary of the toxicological endpoints for chlorantraniliprole used for human risk assessment can be found at *http://www.regulations.gov* in document Chlorantraniliprole (DPX-E2Y45): *Human Health Risk Assessment for Proposed Uses on Pome fruit, Stone fruit, Leafy vegetables, Brassica leafy vegetables, Cucurbit vegetables, Fruiting vegetables, Cotton, Grapes, Potatoes, Rice, Turf and Ornamentals*, pages 22–24 in docket ID number EPA–HQ–OPP–2007–0275.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to chlorantraniliprole, EPA considered exposure under the time-limited tolerance established by this action as well as all existing chlorantraniliprole tolerances in (40 CFR 180.628). EPA assessed dietary exposures from chlorantraniliprole in food as follows:

i. *Acute exposure*. No acute effects were identified in the dietary toxicological studies for chlorantraniliprole; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. EPA's chronic dietary exposure estimates for chlorantriliprole are based on tolerance level residues, assuming 100% crops associated with the existing uses and section 18 requests are treated, and included the highest modeled estimated drinking water concentration relevant to the scenario.

iii. *Cancer*. Chlorantraniliprole is classified as ''Not likely to be Carcinogenic to Humans,'' and therefore a cancer exposure assessment is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT

information in the dietary assessment for chlorantraniliprole. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

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

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of chlorantraniliprole for chronic exposures for non-cancer assessments are estimated to be 3.65 parts per billion (PPB) for surface water and 1.06 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 3.65 ppb was used to assess the contribution to drinking water.

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

Chlorantraniliprole is currently registered for the following uses that could result in residential exposures: Turfgrass and ornamental plants. EPA assessed residential exposure using the following assumptions: Inhalation exposure is not expected due to low vapor pressure; dermal postapplication exposure is possible for adults and children for short- and intermediate-term durations, and exposure from incidental oral ingestion is possible for children.

However, due to the lack of toxicity via the dermal route, as well as the lack of toxicity over the acute, short- and intermediate- term via the oral route, no risk is expected from these exposures.

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

EPA has not made a common mechanism of toxicity finding as to chlorantraniliprole and any other substances, and chlorantraniliprole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that chlorantraniliprole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

C. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. Chlorantraniliprole did not result in developmental toxicity in either rats or rabbits or in reproductive effects in the multi–generation reproduction study. There was no indication of increased offspring susceptibility in these studies.

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

i. The toxicity database for chlorantraniliprole is complete.

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

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

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

D. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to chlorantraniliprole from food and water will utilize 1% of the cPAD for (children 1-2 years old) the population group receiving the greatest exposure.

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

Although short-term residential exposure could occur with the use of chlorantraniliprole, no toxicological effects resulting from short-term dosing were observed. Therefore, the aggregate

short-term risk is the sum of the risk from food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Although intermediate-term residential exposure could result from the use of chlorantraniliprole, no toxicological effects resulting from intermediate-term dosing were observed. Therefore, the aggregate intermediate-term risk is the sum of the risk from food and water and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population.* Chlorantraniliprole is classified as ''Not likely to be Carcinogenic to Humans'' and is therefore not expect to pose a cancer risk.

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

V. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are no CODEX residue limits for residues of chlorantraniliprole on sweet corn commodities or in milk.

VI. Conclusion

Therefore, time-limited tolerances are established for residues of chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide), in or on corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, forage at 6.0 ppm; corn, sweet, stover at 6.0 ppm; corn, sweet, cannery waste at 6.0 ppm; and milk at 0.03 ppm. These tolerances expire and are revoked on December 31, 2011.

VII. Statutory and Executive Order Reviews

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

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 22, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.628 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.628 Chlorantraniliprole; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
Corn, sweet, cannery waste	6.0	12/31/11
Corn, sweet, forage	6.0	12/31/11

Commodity	Parts per million	Expiration/ revocation date
Corn, sweet, kernel plus cob with husks removed	0.01	12/31/11
Corn, sweet, stover	6.0	12/31/11
Milk	0.03	12/31/11
* *	*	* *

* * * * *

[FR Doc. E8–20520 Filed 9–5–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–1199; FRL–8376–6]

Uniconazole-P; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of uniconazole-P, its *R*-enantiomer and its *Z*-isomer in or on vegetable, fruiting, group 8. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 5, 2008. Objections and requests for hearings must be received on or before November 4, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1199. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–1199 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before November 4, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–1199, by one of the following methods:

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

II. Petition for Tolerance

In the **Federal Register** of February 6, 2008 (73 FR 6964) (FRL–8350–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7268) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by adding a section for the fungicide uniconazole-P and

establishing a tolerance therein for residues of uniconazole-P *per se* in or on vegetable, fruiting, group 8 at 0.01 parts per million (ppm). That notice referenced a summary of the petition prepared by Valent USA Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the tolerance expression to include uniconazole-P, its *R*-enantiomer and its *Z*-isomer. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for combined residues of uniconazole-*P*, its *R*-enantiomer and its *Z*-isomer on vegetable, fruiting, group 8 at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing this tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Uniconazole-*P* (hereafter referred to as uniconazole) is rapidly absorbed after oral ingestion and extensively metabolized by the liver. There is no accumulation in the tissues, and the metabolites are rapidly excreted in the feces and urine. Uniconazole has moderate acute oral toxicity and low acute dermal and inhalation toxicity. It is a slight eye irritant but not a skin irritant or skin sensitizer. In mouse, rat and dog repeated-dose studies, oral ingestion of high doses caused an increase in the size and weight of the liver. Fat accumulation in the liver was also consistently observed at high doses. Although observed less consistently, increases in the activity of some enzymes indicated altered liver function as a response to uniconazole exposure. There was no evidence of carcinogenicity in the combined chronic toxicity/carcinogenicity study in the rat; however, in the mouse study an increase in liver neoplasms was noted. Mutagenicity studies were generally negative except for the *in vitro* mammalian chromosome aberration test (CHO), which was positive with metabolic activation. Based on the limited evidence of carcinogenicity in the mouse, EPA classified uniconazole as a Group C (Possible Human) carcinogen but concluded that quantification of cancer risk using a low dose extrapolation model was not appropriate. The point of Departure (POD) selected for deriving the chronic reference dose will adequately account for all chronic effects determined to result from exposure to uniconazole in chronic animal studies, including potential cancer effects. Uniconazole had no effects on reproductive performance of rats in the 2-generation reproduction toxicity study and no effect on fetal development in the rabbit developmental toxicity study. In the developmental toxicity study in rats, developmental toxicity (increased incidence of 14th ribs) was noted, but only at doses that were also maternally toxic. There was no evidence of neurotoxicity in the submitted uniconazole toxicity studies or in the open literature.

Specific information on the studies received and the nature of the adverse effects caused by uniconazole, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies, can be found at *http://www.regulations.gov* in the document *Uniconazole-P Human Health Risk Assessment for Proposed Uses on Fruiting Vegetables (Except Cucurbits), Crop Group 8* pages 52–75 in docket ID number EPA–HQ–OPP–2007–1199.

B. Toxicological Endpoints

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

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

A summary of the toxicological endpoints for uniconazole used for human risk assessment can be found at *http://www.regulations.gov* in the document *Uniconazole-P Human Health Risk Assessment for Proposed Uses on Fruiting Vegetables (Except Cucurbits), Crop Group 8* pages 26–27 in docket ID number EPA–HQ–OPP–2007–1199.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary

exposure to uniconazole, EPA considered exposure under the petitioned-for tolerance on fruiting vegetables, the first food use of uniconazole. EPA assessed dietary exposures from uniconazole in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. EPA identified such an effect relevant to the population group females, 13 years of age and older (increased incidence of 14th rib following *in utero* exposure to uniconazole in the rat developmental toxicity study). No acute effects were identified for the general population, including infants and children.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 Nationwide Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that all foods covered by the fruiting vegetable tolerance contain tolerance-level residues and that 100% of fruiting vegetables are treated with uniconazole.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA again assumed that all foods covered by the fruiting vegetable tolerance contain tolerance-level residues and that 100% of fruiting vegetables are treated with uniconazole.

iii. *Cancer*. Based upon statistically significant increases in hepatocellular neoplasms in high-dose male mice, EPA classified uniconazole as a Group C (Possible Human) carcinogen but concluded that quantification of cancer risk using a low dose extrapolation model was not appropriate. This determination was based on the fact that the tumor induced is primarily of a benign nature, occurred at the highest dose tested in one sex of one species only with no acceleration in the rate of tumor formation and did not exhibit any uncommon biological behavior. The POD selected for deriving the chronic reference dose (cRfD) will adequately account for all chronic effects determined to result from exposure to uniconazole in chronic animal studies, including potential cancer effects.

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

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

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of uniconazole for acute exposures are estimated to be 3.1 parts per billion (ppb) for surface water and 0.076 ppb for ground water; and for chronic exposures for non-cancer assessments are estimated to be 1.5 ppb for surface water and 0.076 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 3.1 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 1.5 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.*, for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Uniconazole is not registered for any specific use patterns that would result in residential exposure.

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

Uniconazole is a member of the triazole-containing class of pesticides, sometimes referred to as conazoles. Although conazoles act similarly in fungi by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events, including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Uniconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and several triazole conjugates (including triazole alanine, triazole acetic acid, triazole pyruvic acid and triazole lactic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including uniconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazole alanine, and triazole acetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. Triazole pyruvic acid and triazole lactic acid were not included in the risk assessment due to their low occurrence in metabolism studies. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (*e.g.*, use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov* (Docket ID EPA–

HQ–OPP–2005–0497). Additional information regarding the uses proposed for uniconazole in this action can also be found at *http://www.regulations.gov* in the documents *Dietary Exposure Assessments for the Common Triazole Metabolites 1,2,4-Triazole, Triazolylalanine, Triazolylacetic Acid, and Triazolylypyruvic Acid; Updated to Include New Uses of Fenbuconazole, Ipconazole, Metconazole, Tebuconazole, and Uniconazole; and a Change in Plant-back Restriction for Tetraconazole and Uniconazole-P: Acute, Chronic and Cancer Aggregate Dietary (Food and Drinking Water) Exposure Analyses for the Section 3 Registration Action* in docket ID number EPA–HQ–OPP–2007–1199.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for uniconazole includes rat and rabbit developmental toxicity studies and a 2-generation reproduction toxicity study in rats. There was no evidence of increased qualitative or quantitative susceptibility of rabbit fetuses following *in utero* exposure to uniconazole and no evidence of increased susceptibility of offspring in the 2-generation reproduction study in rats. There was evidence of increased qualitatative susceptibility of fetuses in the rat developmental study. In this study, an increased incidence of 14th rib in the fetuses was observed in the presence of minimal maternal toxicity (decreased body weight). The degree of concern for the qualitative susceptibility seen in the rat developmental study is low because:

• The additional rib was the only skeletal variation noted

• The fetal effect occurred only in the presence of maternal toxicity

• In the reproduction study in rats, higher doses resulted in minimal pup toxicity (slightly reduced body weights); and:

• The NOAEL for the fetal effect is used for assessing acute risk of females 13 years and older and is, therefore, protective of potential developmental effects.

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

i. The uniconazole database is adequate to assess prenatal and postnatal toxicity.

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

iii. Although there is qualitative evidence of increased susceptibility in the prenatal developmental study in rats, EPA did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of uniconazole. The degree of concern for prenatal and/or postnatal toxicity is low.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed assuming 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to uniconazole in drinking water. Residential exposure to uniconazole is not expected. These assessments will not underestimate the exposure and risks posed by uniconazole.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to uniconazole will occupy <1% of the aPAD for females 13 to 49 years old, the only population group for which an acute endpoint of concern was identified.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to uniconazole from food and water will utilize <1% of the cPAD for the general population and all population subgroups, including infants and children. There are no residential uses for uniconazole.

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Uniconazole is not registered for any use patterns that would result in residential exposure. Therefore, the short- and intermediate-term aggregate risk is the sum of the risk from exposure to uniconazole through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. The Agency has determined that the chronic risk assessment based on the established cPAD is protective of potential cancer effects. Based on the results of the chronic risk assessment discussed above in Unit E.2, EPA concludes that uniconazole is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Gas Chromatography/Nitrogen Phosphorus Detector (GC/NPD); Valent Method RM-25-1b) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No Codex, Canadian, or Mexican MRLs have been established for uniconazole.

C. Revisions to Petitioned-For Tolerance

The petitioner proposed a tolerance for residues of uniconazole-*P per se* in or on vegetable, fruiting, group 8. However, based on the results of plant metabolism studies, EPA has determined that the residues of concern to be included in the tolerance expression for fruiting vegetables are uniconazole-*P*, its *R*-enantiomer and its *Z*-isomer. Therefore, EPA has modified the tolerance expression to include all three compounds.

V. Conclusion

Therefore, the tolerance is established for combined residues of uniconazole-*P*, (E)-(S)-1-(4-chlorophenyl)-4,4-dimethyl-2-(1*H*-1,2,4-triazol-1-yl)pent-1-en-3-ol, its *R*-enantiomer and its *Z*-isomer in or on vegetable, fruiting, group 8 at 0.01 ppm.

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 26, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.643 is added to read as follows:

§ 180.643 Uniconazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide/plant growth regulator uniconazole-P, (E)-(S)-1-(4-chlorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazol-1-yl)pent-1-en-3-ol, its *R*-enantiomer and its *Z*-isomer in or on the following raw agricultural commodities:

Commodity	Parts per million
Vegetable, fruiting, group 8	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertant residues.* [Reserved]

[FR Doc. E8–20548 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0097; FRL–8376–7]

Tebuconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; final order.

SUMMARY: This order amends the pesticide tolerance regulation for tebuconazole by establishing a tolerance for pistachios. Pesticide tolerances are established under the Federal Food, Drug, and Cosmetic Act (FFDCA). This order resolves an objection filed by Bayer CropScience in response to a final rule on tebuconazole tolerances published on May 14, 2008.

DATES: This regulation is effective September 5, 2008.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0097. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the

index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Tracy Keigwin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6605; e-mail address: *keigwin.tracy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

II. Prior Tebuconazole Tolerance Rulemaking

In the **Federal Register** of May 14, 2008, (73 FR 27748) (FRL–8364–6), EPA established tolerances for the residues of tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, in or on the food commodities nut, tree, group 14 at 0.05 ppm; almond, hulls at 6.0 ppm; barley, grain at 0.15 ppm; barley, hay at 7.0 ppm; barley, straw at 3.5 ppm; wheat, forage at 3.0 ppm; wheat, grain at 0.05 ppm; wheat, hay at 7.0 ppm; and wheat, straw at 1.5 ppm. These tolerances were established in response to a petition from Bayer CropScience. In addition to the tolerances granted in that rule, Bayer CropScience had also petitioned for a tebuconazole tolerance on pistachios. EPA declined to establish that tolerance concluding that pistachios were covered by the crop group tolerance for tree nuts.

III. Bayer CropScience Objection

On July 1, 2008, Bayer CropScience filed an objection to the tolerance rulemaking pursuant to 21 U.S.C. 346a(g)(2)(A). Bayer CropScience argued that EPA had erred in not establishing a separate tolerance for pistachios. Bayer CropScience noted that pistachios are not listed as a member of tree nut crop group in 40 CFR 180.41(c)(14).

IV. Order on Objections

Bayer CropScience's objection is well-taken. Although EPA is planning to amend the tree nut crop group to include pistachios, such amendment has not yet been accomplished. Therefore, EPA erred in concluding that a pistachio tolerance was made unnecessary by establishment of a tree nut crop group tolerance for tebuconazole. Accordingly, EPA, by this order and pursuant to FFDCA section 408(g)(2)(C), is amending the tebuconzole tolerance at 40 CFR 180.474 to establish a tolerance for pistachios at 0.05 ppm. Because EPA assumed that pistachios were covered by the tree nut crop group tolerance in its prior action, creating a separate pistachio tolerance will in no way affect the safety finding made in that action.

V. Conclusion

Therefore, pursuant to FFDCA section 408(g)(2)(C), a tolerances is established for the residues of tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, in or on the food commodity pistachios at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(g)(2)(C) of FFDCA in response to a petition submitted to the Agency under FFDCA section 408(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined

that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 25, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.474 is amended in paragraph (a)(1) by alphabetically adding the commodity pistachio to the table to read as follows:

§180.474 Tebuconazole; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Pistachio	0.05
* * * * *	

* * * * *

[FR Doc. E8–20625 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007-0366; FRL–8377–6]

Pyraflufen-ethyl; Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes permanent tolerances for residues of pyraflufen-ethyl in or on grass, forage, group 17; and grass, hay, group 17; establishes time-limited tolerances for milk; cattle, meat byproducts; goat, meat byproducts; horse, meat byproducts and sheep, meat byproducts, and revises the existing tolerances for soybean, forage; soybean, hay; wheat, forage and wheat, hay. Nichino America, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). The time-limited tolerances expire on October 15, 2012.

DATES: This regulation is effective September 5, 2008. Objections and requests for hearings must be received on or before November 4, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007-0366. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Public Docket, in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703-305-6224; e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007-0366 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 4, 2008

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007-0366, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg., 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerances

In the **Federal Register** of June 27, 2007 (72 FR 35237) (FRL–8133–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7190) by Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. The petition requested that 40 CFR 180.585 be amended by establishing tolerances for residues of the herbicide, pyraflufen-ethyl, ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate; and its acid metabolite, E-1, 2-chloro-5-4-chloro-5-difluoromethoxy-(1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid, expressed in terms of the parent in or on food commodities: Soybeans, forage at 0.05 parts per million (ppm); soybean, hay at 0.10 ppm; grass, forage, crop group 17 at 1.0 ppm; and grass, hay, crop group 17 at 1.2 ppm.

In the **Federal Register** of June 13, 2008 (73 FR 33814) (FRL–8367–3), EPA issued a second notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7190) by Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. The petition requested that 40 CFR 180.585 be amended by establishing new tolerances for residues of the herbicide, pyraflufen-ethyl, ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate, and its acid metabolite, E-1, 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid, expressed in terms of the parent, in or on food commodities grass, forage, group 17 at 1.0 ppm; grass, hay, group 17 at 1.4 ppm; milk at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat byproducts at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm, and by revising existing tolerances for residues of the herbicide, pyraflufen-ethyl, ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate, and its acid metabolite, E-1, 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid, expressed in terms of the parent, in or on food commodities soybean, seed to 0.05 ppm; soybean, hay to 0.10 ppm; wheat, forage to 0.02 ppm; and wheat, hay to 0.01 ppm.These notices referenced a summary of the petition prepared by Nichino America, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notices of filing. Tolerances for milk at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat byproducts at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm expire on October 15, 2012. A time limitation been imposed because of the requirement for a cattle feeding study conducted to determine residues of the E-9 metabolite in milk and cattle tissues.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of pyraflufen-ethyl and its metabolite expressed in terms of the parent on grass, forage, group 17 at 1.0 ppm; grass, hay, group 17 at 1.4 ppm; milk at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat byproducts at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm, and by revising existing tolerances for soybean, forage to 0.05 ppm; soybean, hay to 0.10 ppm; wheat, forage to 0.02 ppm; and wheat, hay to 0.01 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by

pyraflufen-ethyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies.

Pyraflufen-ethyl has low to moderate toxicity from acute exposure and it is not a dermal sensitizer. The liver, kidney, and possibly the hematopoietic system are the target organs for pyraflufen-ethyl in the rat and/or the mouse. There is no evidence of increased sensitivity to the young in developmental and reproductive studies with pyraflufen-ethyl. Pyraflufen-ethyl was not shown to be mutagenic in a battery of tests. Pyraflufen-ethyl was classified as ''Likely to be carcinogenic to humans'' based on male mouse hepatocellular adenomas, carcinomas and/or hepatoblastomas (combined) observed in the mouse carcinogenicity study.

Specific information on the studies received and the nature of the toxic effects caused by pyraflufen-ethyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document Pyraflufen-ethyl: Human Health Risk Assessment for Pyraflufen-ethyl: Proposed New Use on Pasture and Rangeland Grasses (PP 7F7190) and Amendment to Allow Early Season Postemergence Broadcast Uses to Corn (excluding sweet corn), Soybeans and Wheat at page 13 in docket ID number EPA–HQ–OPP–2007–0366.

B. Toxicological Endpoints

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

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

A summary of the toxicological endpoints for pyraflufen-ethyl used for human risk assessment can be found at *http://www.regulations.gov* in document Pyraflufen-ethyl: Human Health Risk Assessment for Pyraflufen-ethyl: Proposed New Use on Pasture and Rangeland Grasses (PP#7F7190) and Amendment to Allow Early Season Postemergence Broadcast Uses to Corn (excluding sweet corn), Soybeans and Wheat at page 13 in docket ID number EPA–HQ–OPP–2007-0366. Also, a summary of the toxicological endpoints for pyraflufen-ethyl used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of April 30, 2003 (68 FR 23046) (FRL–7300–9).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to pyraflufen-ethyl, EPA considered exposure from the petitioned-for tolerances as well as all existing pyraflufen-ethyl tolerances in 40 CFR 180.585. EPA assessed dietary exposures from pyraflufen-ethyl in food as follows:

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

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

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, the following assumptions were made for the chronic exposure assessments: 100 percent crop treated (PCT) and tolerance-level residues for pyraflufen-ethyl on all treated crops except corn, cottonseed, potato, soybean and wheat for which one half of the combined Levels of Quantification (LOQs) for the parent and the metabolite were used since all field trial data were less than the LOQ.

iii. *Cancer*. For the cancer dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, the following assumptions were made for the chronic exposure assessments: 100 percent crop treated (PCT) and tolerance-level residues for pyraflufen-ethyl on all treated crops except corn, cottonseed, potato, soybean and wheat for which one-half of the combined LOQs for the parent and the metabolite were used since all field trial data were less than the LOQ.

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

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of pyraflufen-ethyl for acute exposures are estimated to be 1,247 parts per trillion (ppt) for surface water and 1.8 ppt for ground water. Chronic exposures for cancer assessments are estimated to be 281 ppt for surface water and 1.8 ppt for ground water

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration value of 281 ppt was used to assess the contribution to drinking water.

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

Pyraflufen-ethyl is currently registered on the following residential non-dietary sites that could result in residential exposures: airports, nurseries, ornamental turf, golf courses, roadsides, railroads, non-crop land, and uncultivated agricultural areas. The risk assessment was conducted using the following residential exposure assumptions: adults and children may be exposed to residues of pyraflufen-ethyl through short-term post-application contact with treated areas which may include residential/recreational areas.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with pyraflufen-ethyl. There is no evidence of increased susceptibility of young rats in the reproduction study with pyraflufen-ethyl. EPA concluded there are no residual uncertainties for pre- and/or postnatal exposure.

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

i. The toxicity database for pyraflufen-ethyl is complete.

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

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

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

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pyraflufen-ethyl from food and water will utilize less than 1% of the cPAD for all population groups. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of pyraflufen-ethyl is not expected.

3. *Short-term risk.* Pyraflufen-ethyl is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to pyraflufen-ethyl.

Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A short-term risk aggregate assessment was not performed for adults because no handler exposure is expected and post-application inhalation exposure is expected to be negligible (and there are no dermal endpoints of concern). A short-term aggregate risk assessment was performed for infants and children because there is a potential for oral post-application exposure resulting from contact with treated areas which may include residential/recreational areas. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water. Short term aggregate risk is based on children's incidental oral exposure (from residential post-application treatment) and dietary exposure (food and drinking water). The anticipated exposure level for children, 1-2 years (the highest exposed population) is below EPA's level of concern, with a Margin of Exposure (MOE) greater than 60,000.

4. *Intermediate-term risk.*

Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyraflufen-ethyl is not registered for any use patterns that would result in intermediate-term residential exposure. No residential handler exposure is expected and post-application inhalation exposure is expected to be negligible. Post-application exposure to infants and children over the intermediate term duration (1 to 6) months is not likely based on the use pattern. Therefore, the intermediate-

term aggregate risk is the sum of the risk from exposure to pyraflufen-ethyl through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. The aggregate cancer risk assessment for the general population takes into account exposure estimates form dietary consumption of pyraflufen-ethyl from food, residential, and drink water sources. Exposures from residential uses are based on the lifetime average daily dose and assume an exposure period of 5 days per year and 50 years of exposure in a lifetime (70 years). Average food plus water source dietary exposure was used. Estimated cancer risk for the U.S. population includes infants and children. The aggregate cancer risk estimate for pyraflufen-ethyl is 2.9 x 10^{-6}. This risk estimate is based, in part, on the conservative assumption that 100% of all crops for which pyraflufen-ethyl is registered or proposed for registration are treated. Additional refinement using Percent Crop Treated estimates would result in a lower estimate of cancer risk.

EPA generally considers cancer risks in the range of 1 in 1 million (1 x 10^{-6}) or less to be negligible. The precision which can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the log scale; for example, risks falling between 3.16 x 10^{-7} and 3.16 x 10^{-6} are expressed as risks in the range of 1 x 10^{-6}. Considering the precision with which cancer hazard can be estimated, the conservativeness of low-dose linear extrapolation, and the rounding procedure described above, cancer risk should generally not be assumed to exceed the benchmark LOC of the range of 1 x 10^{-6} until the calculated risk exceeds approximately 3 x 10^{-6}. Since the calculated cancer risk for pyraflufen-ethyl does not exceed this level, estimated cancer risk is considered to be negligible.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are currently no established Codex, Canadian or Mexican maximum residue limits, for residues of pyraflufen-ethyl in/on grass, milk, meat byproducts, soybean and wheat.

V. Conclusion

Therefore, permanent tolerances are established for residues of pyraflufen-ethyl and its metabolite expressed in terms of the parent on grass, forage, group 17 at 1.0 ppm; grass, hay, group 17 at 1.4 ppm. Time-limited tolerances are established for milk at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat byproducts at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm. Existing tolerances are revised for soybean, forage to 0.05 ppm; soybean, hay to 0.10 ppm; wheat, forage to 0.02 ppm; and wheat, hay to 0.01 ppm.

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 25, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.585 is amended by revising paragraph (a) to read as follows:

§ 180.585 Pyraflufen-ethyl; tolerances for residues.

(a) *General*. Tolerances are established for residues of the herbicide, pyraflufen-ethyl, ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate, and its acid metabolite, E-1, 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid, expressed in terms of the parent in or on the following food commodities:

Commodity	Parts per million	Expiration/ revocation date
Cattle, meat by-products	0.02	10/15/12
Corn, field, forage	0.01	None
Corn, field, grain	0.01	None
Corn, field, stover	0.01	None
Cotton, gin by-products	1.5	None
Cotton, undelinted seed	0.04	None
Goat, meat by-products	0.02	10/15/12
Grass, forage, group 17	1.0	None
Grass, hay, group 17	1.4	None
Horse, meat by-products	0.02	10/15/12
Milk	0.02	10/15/12
Potato	0.02	None
Sheep, meat by-products	0.02	10/15/12
Soybean, forage	0.05	None
Soybean, hay	0.10	None
Soybean, seed	0.01	None
Wheat, forage	0.02	None
Wheat, grain	0.01	None
Wheat, hay	0.01	None
Wheat, straw	0.01	None

* * * * *

[FR Doc. E8–20515 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070717340–8451–02]

RIN 0648–XK16

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Directed Butterfish Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the directed fishery for butterfish in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, September 5, 2008. Vessels issued a Federal permit to harvest butterfish may not retain or land more than 250 lb (0.11–mt) of butterfish per trip for the remainder of the year (through December 31, 2008). This action is necessary to prevent the fishery from exceeding its domestic annual harvest (DAH) of 500 mt and to allow for effective management of this stock.

DATES: Effective 0001 hours, September 5, 2008, through 2400 hours, December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978–281–9221, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the butterfish fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2008 specification of DAH for butterfish was set at 500 mt (73 FR 18443, April 4, 2008).

Section 648.22 requires NMFS to close the directed butterfish fishery in the EEZ when 80 percent of the total annual DAH has been harvested. If 80 percent of the butterfish DAH is projected to be landed prior to October 1, a 250–lb (0.11–mt) incidental butterfish possession limit is put in effect for the remainder of the year, and if 80 percent of the butterfish DAH is projected to be landed on or after October 1, a 600–lb (0.27–mt) incidental butterfish possession limit is put in effect for the remainder of the year. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of butterfish permits at least 72 hr before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for butterfish in 2008 fishing year will be harvested. Therefore, effective 0001 hours, September 5, 2008, the directed fishery for butterfish fishery is closed and vessels issued Federal permits for butterfish may not retain or land more than 250 lb (0.11 mt) of butterfish during a calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2009, when the 2009 DAH becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: September 2, 2008.

Allan D. Risenhoover,

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

[FR Doc. E8–20600 Filed 9–2–08; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 73, No. 173

Friday, September 5, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM04–7–005]

Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities; Order Requesting Supplemental Comments

Issued August 29, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Requesting Supplemental Comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission), in response to requests for rehearing of Order No. 697–A, intends to revise the definition of the term ''affiliate'' adopted in Order No. 697–A and codified in the Commission's regulations, and seeks supplemental comments on this issue.

DATES: Comments are due October 20, 2008.

FOR FURTHER INFORMATION CONTACT:

Michelle Barnaby (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8407.

Paul Silverman (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8683.

Paige Bullard (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6462.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Order Requesting Supplemental Comments

1. The Federal Energy Regulatory Commission (Commission) intends to revise the definition of the term ''affiliate'' adopted in Order No. 697–A and codified in § 35.36(a)(9) of the Commission's regulations,[1] in response to issues raised in requests for rehearing of Order No. 697–A.[2] To ensure a complete record and full opportunity of all parties to comment on a revised definition of ''affiliate'' in this docket, the Commission is seeking supplemental comments on this issue.

I. Background

2. In Order No. 697–A, the Commission clarified that it would define the term ''affiliate'' for purposes of Order No. 697 and the affiliate restrictions adopted in § 35.39 of its regulations as that term is used in the regulations adopted in the Affiliate Transactions Final Rule.[3] The Commission stated that it was taking this action in light of its goal to have a more consistent definition of affiliate for purposes of both exempt wholesale generators (EWGs) and non-EWGs to the extent possible, as well as to strengthen the Commission's ability to ensure that customers are protected.

3. The Commission explained that in the Affiliate Transactions Final Rule, it considered the use of the term affiliate in the context of the Affiliate Transactions Notice of Proposed Rulemaking, the Commission's Standards of Conduct for Transmission Providers, and other precedent.[4] In particular, the Commission considered its order in the 1995 *Morgan Stanley* case, in which it adopted distinct definitions of affiliate for EWGs and non-EWGs. The Commission noted there that section 214 of the Federal Power Act (FPA) required use of the Public Utility Holding Company Act of 1935 (PUHCA 1935) definition of affiliate to determine whether an electric utility is an affiliate of an EWG for purposes of evaluating EWG rates for wholesale sales of electric energy. The Commission thus stated in *Morgan Stanley* that the PUHCA 1935 definition of affiliate would apply to EWGs for matters arising under Part II of the FPA.[5] For all other public utilities, the Commission adopted a definition that in essence treats all companies under the common control of another company, as well as that controlling company, as affiliates. The Commission also stated in *Morgan Stanley* that a ten percent or greater voting interest creates a rebuttable presumption of control.[6] After reviewing the precedent established in *Morgan Stanley*, the Commission in the Affiliate Transactions Final Rule also reviewed FPA section 214 as revised by EPAct 2005 as well as the affiliate definitions contained in both PUHCA 1935[7] and the Public Utility Holding Company Act of 2005 (PUHCA 2005).[8]

[1] 18 CFR 35.36(a)(9).

[2] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697-A, 73 FR 25832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268, *clarified,* 124 FERC ¶ 61,055 (2008).

[3] *Cross-Subsidization Restrictions on Affiliate Transactions,* Order No. 707, 73 FR 11013 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,264 (Feb. 21, 2008) (Affiliate Transactions Final Rule), *order on rehearing,* Order No. 707–A, 73 FR 43072 (July 24, 2008), FERC Stats. & Regs. ¶ 31,272 (2008).

[4] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 182 (citing *Morgan Stanley Capital Group, Inc.*, 72 FERC ¶ 61,082, at 61,436–37 (1995) (*Morgan Stanley*)).

[5] *Morgan Stanley*, 72 FERC ¶ 61,082 at 61,436–37.

[6] *Id.* The Commission did this by adopting the definition of an affiliate found in its Standards of Conduct for Interstate Pipelines.

[7] 15 U.S.C. 79a *et seq.* PUHCA 1935 defines an affiliate as:

(a) Any person that directly or indirectly owns, controls or holds with the power to vote, 5 per centum or more of the outstanding voting securities of such specified company;

(b) Any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with the power to vote, directly or indirectly, by such specified company;

(c) Any individual who is an officer or director of such specified company, or of any company which is an affiliate thereof under clause (a) of this paragraph; and

(d) Any person or class of persons that the [Securities and Exchange Commission] determines, after appropriate notice and opportunity for hearing, to stand in such relation to such specified company that there is liable to be such an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligation, duties, and liabilities imposed in this title upon affiliates of a company.

[8] EPAct 2005 at 1261 *et seq.* Prior to its amendment by the Energy Policy Act of 2005, section 214 of the FPA, 16 U.S.C. 824m, read as follows:

No rate or charge received by an exempt wholesale generator for the sale of electric energy shall be lawful under section 824d of this title if, after notice and opportunity for hearing, the Commission finds that such rate or charge results

4. In Order No. 697–A, the Commission explained that after taking into account these differing definitions, and recognizing the need to provide greater clarity and consistency in its rules, the Commission found in the Affiliate Transactions Final Rule that it was important to try to adopt a more consistent definition in its various rules and also one that is sufficiently broad to allow the Commission to protect customers adequately.[9] The Commission further explained that on this basis, the definition of affiliate as adopted in the Affiliate Transactions Final Rule explicitly incorporated the PUHCA 1935 definition of an affiliate for EWGs, which uses a five percent voting interest threshold, rather than incorporate it by reference, as previously had been done. The definition in the Affiliate Transactions Final Rule also adopted a parallel definition of affiliate for non-EWGs, but with adjustments to reflect the ten percent voting interest threshold for non-EWGs that was utilized up to that time and to eliminate certain language not applicable or necessary in the context of the FPA. The Commission in Order No. 697–A then adopted in this rule the same definition of ''affiliate'' that it had adopted in the Affiliate Transactions Final Rule.

II. Requests for Rehearing

5. The Electric Power Supply Association (EPSA), the Mirant Entities (Mirant)[10] and Reliant Energy, Inc. (Reliant) (together, petitioners) submitted requests for rehearing of the Commission's determination in Order No. 697–A to codify in its market-based rate regulations a definition of affiliate that distinguishes between EWGs and non-EWGs.[11] They argue that the Commission erred in adopting a separate definition for EWGs.[12]

6. EPSA states that a five percent ownership threshold for EWGs imposes substantially greater burdens on EWGs and achieves no useful regulatory purpose. EPSA contends that the Commission has provided no reasoned explanation for using a definition derived from PUHCA 1935 that imposes greater burdens, including change in status reporting obligations, on EWGs than those imposed on other market-based rate sellers. EPSA maintains that if the Commission is going to promulgate a definition of affiliate for market-based rate purposes, it should apply to EWGs the definition adopted in Order No. 697–A for non-EWGs, which uses a ten percent ownership threshold.[13] EPSA also argues that the Commission's promulgation of a separate definition of affiliate for EWGs was a violation of the notice requirements of the Administrative Procedure Act because the Commission did not signal any intent to do so either in the market-based rate notice of proposed rulemaking or in Order No. 697 and did not afford interested parties an opportunity to comment on the regulatory text.[14]

7. Reliant similarly argues that placing disparate burdens on companies simply because they do or do not hold EWG status is arbitrary and capricious and not in the public interest. According to Reliant, the Commission has provided no reasonable basis to maintain two different definitions for determining affiliates of EWGs and non-EWGs. Reliant asserts that the only reason that the Commission previously had adopted a narrower affiliate definition under the market-based rate program for EWG utilities was its prior belief that FPA section 214 did not provide sufficient discretion to the Commission to use a different definition.[15] However, Reliant states that the Commission effectively recognized in Order No. 697–A that it is not required by statute to use the FPA section 214 definition of affiliate for purposes beyond the narrow scope of section 214 and that, for purposes outside of section 214, it has discretion to adopt an affiliate definition for EWGs that is different from that contained in section 214.[16] Reliant argues that the Commission must not be arbitrary and capricious in the exercise of that discretion.

8. Reliant states that it supports the Commission's goal of using consistent affiliate definitions for all FPA public utilities, but it asserts that the use of different standards for EWGs and non-EWGs for FPA purposes (other than the narrow situations that might arise under section 214 of the FPA) does not achieve that consistency.[17] Reliant submits that the Commission has consistently recognized in administering its market-based rate program that the relevant inquiry with respect to affiliate relations pertains to control, *i.e.*, whether a market-based rate seller is controlled by another entity or whether a market-based rate seller and other sellers are under common control of the same entity. It notes that the Commission has consistently concluded that the starting point for assessing control is based on a standard that begins with the ownership of ten percent or more of a company's voting securities.[18] According to Reliant, a lower five percent standard for EWGs casts too broad a net, with the result being that EWG public utilities and their owners may be required to impute affiliation at thresholds significantly below the ten percent standard applicable to non-EWG utilities. Reliant submits that the Commission has not explained how this disparate treatment of EWGs is necessary or appropriate for assessing market power or other purposes under its market-based rate program.

9. Reliant therefore argues that the Commission should grant rehearing and eliminate the PUHCA 1935 definition for EWG affiliates and use the same definition of affiliate for EWGs that it has adopted in Order No. 697–A for non-EWG utilities, which Reliant describes as based on a control standard.[19]

10. Mirant raises similar arguments. It maintains that the Commission provided no basis for adopting a five percent voting interest affiliate test for EWGs when the test for non-EWGs is ten percent. Mirant argues that the five percent voting interest standard that has its origin in FPA section 214 applies only to evaluation of EWG rates and has no relevance to an analysis of control over generation or the events that should trigger a change in status filing. Mirant contends that this rulemaking

from the receipt of any undue preference or advantage from an electric utility which is an associate company or an affiliate of the exempt wholesale generator. For purposes of this section, the terms ''associate company'' and ''affiliate'' shall have the same meaning as provided in section 2(a) of the Public Utility Holding Company Act of 1935.

EPAct 2005 amended section 214 of the FPA by substituting the reference to the PUHCA 1935 definition of affiliate with a reference to the PUHCA 2005 definition. PUHCA 2005 defines an affiliate of a specified company as any company in which the specified company has a five percent or greater voting interest. Thus, as revised by EPAct 2005, the only EWG affiliate sales that are subject to FPA section 214 are sales by an EWG to a company in which it owns a five percent or greater voting interest.

[9] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 182.

[10] The Mirant Entities are Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, Mirant Canal, LLC, Mirant Kendal, LLC, Mirant Bowline, LLC, Mirant Lovett, LLC, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC, Mirant Potomac River, LLC, and Mirant Energy Trading, LLC.

[11] Other issues have been raised on rehearing of Order No. 697–A and will be addressed in a subsequent order.

[12] EPSA Rehearing Request at 5 (citing Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 182–83); Mirant Rehearing Request at 6–7; Reliant Rehearing Request at 2–3.

[13] EPSA Rehearing Request at 19.

[14] *Id.* at 5–6, 13–15 (citing 5 U.S.C. 553(b)(3)).

[15] Reliant Rehearing Request at 13.

[16] *Id.* at 9.

[17] *Id.* at 11.

[18] *Id.* at 15.

[19] *Id.* at 17.

concerns both the measure of a seller's ability to exercise market power and the facts that warrant reporting of ''changes in status'' in a seller's market-based rate docket.[20] It states that the requirement that market-based rate sellers report changes in status is based not on the Commission's concern for the rates and charges of the EWG, but on the Commission's need to be informed of the potential exercise of market power through the ownership or control of generation or transmission. Mirant therefore requests that the Commission analyze the issue in light of the purposes behind change in status filings and find that there is no basis for distinguishing between EWGs and non-EWGs in this context.[21]

III. Discussion

11. We have carefully considered the legal and policy arguments petitioners have raised on rehearing in opposition to a separate definition of affiliate for EWGs. Mirant and Reliant argue that, although section 214 of the FPA requires the Commission to apply a five percent standard to certain transactions involving EWGs, the Commission is not required to use a five percent standard in a definition of affiliate developed for the general task of assessing market concentration and market power.[22] Petitioners argue instead that the Commission should apply the same standard in its market-based rate regulations to EWGs and non-EWGs for purposes of determining affiliation. Having again analyzed FPA section 214, and irrespective of any Commission precedent to the contrary, we agree that a reasonable interpretation of FPA section 214 is that it does not require the Commission to use a five percent threshold affiliate test for EWGs for all purposes under Part II of the FPA, and in particular for purposes of analyzing market concentration and market power.[23] We also find the arguments in support of a single definition of affiliate, applicable to both EWGs and non-EWGs, to be persuasive. Upon reconsideration, therefore, we believe that using the same definition for EWGs as for non-EWGs is appropriate and that the definition the Commission adopted in Order No. 697–A for non-EWG utilities would not affect the substance of the Commission's analysis of market power issues. This definition is based on the structure of the PUHCA 1935 definition, but modified in several ways, including use of a ten percent threshold instead of five percent.

12. Accordingly, the Commission intends to revise the definition of affiliate in § 35.36(a)(9) of its regulations to delete the separate definition for EWGs and to revise the non-EWG part of the definition to delete the phrase ''other than an exempt wholesale generator.'' Specifically, the revised definition of affiliate in § 35.36(a)(9) would provide that an affiliate of a specified company means: (a) Any person that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company; (b) Any company 10 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company; (c) Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate; and (d) Any person that is under common control with the specified company. For purposes of paragraph (a)(9)(i), owning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control.

13. We believe this revision will result in fair and consistent treatment of jurisdictional sellers. Before taking final action in response to the rehearing comments, however, we seek supplemental comments on the proposed revised definition of affiliate in § 35.36(a)(9) as discussed above.

IV. Information Collection Statement

14. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (information collections) imposed by an agency.[24] Order No. 697's revisions to the information collection requirements for market-based rate sellers were approved under OMB Control Nos. 1902–0234. Order No. 697–A clarified aspects of the existing information collection requirements for the market-based rate program, but did not add to those requirements. While this order requests comments on the Commission's proposal to revise the definition of affiliate in § 35.36(a)(9) of the Commission's regulations, it does not add to the existing information collection requirements for the market-based rate program. Accordingly, a copy of this order will be sent to OMB for informational purposes only.

V. Regulatory Flexibility Act

15. The Regulatory Flexibility Act of 1980[25] generally requires either a description and analysis of a rule that will have a significant economic impact on a substantial number of small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.[26] In this order, the Commission seeks comment on a revised definition of affiliate in § 35.36(a)(9) of its regulations, which would apply to EWGs the definition based on a ten percent voting interest adopted in Order No. 697–A for non-EWGs, rather than using the definition adopted in Order No. 697–A for EWGs, which is based on a five percent voting interest. Public utilities seeking and currently possessing market-based rate authority are currently required to comply with the Commission's regulations with regard to the definition of affiliate at § 36.36(a)(9) and the revised definition would decrease the number of entities considered to be affiliates of EWG public utilities. The Commission therefore concludes that a revised definition of affiliate in § 35.36(a)(9) should not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

16. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room

[20] Mirant Rehearing Request at 9.

[21] *Id.*

[22] *Id.* at 8–9; Reliant Rehearing Request at 9, 11.

[23] Section 214 uses a five percent affiliate threshold with respect to determining whether the jurisdictional rates of an EWG are the result of a preference or advantage of an affiliate of the EWG. While an analysis of market power relates to an EWG's rates, it does not involve the specific issue of whether an EWG has received an undue preference or advantage with respect to a particular wholesale sale.

[24] 5 CFR 1320.12.

[25] 5 U.S.C. 601–612.

[26] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. 13 CFR 121.201.

during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

17. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

18. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20546 Filed 9–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–161695–04]

RIN 1545–BE23

Farmer and Fisherman Income Averaging; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document corrects a notice of proposed rulemaking by cross-reference to temporary regulations (REG–161695–04) that was published in the **Federal Register** on Tuesday, July 22, 2008 (73 FR 42538) relating to the averaging of farm and fishing income in computing income tax liability.

FOR FURTHER INFORMATION CONTACT: Amy Pfalzgraf, (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG–161695–04) that is the subject of this correction is under section 1301 of the Internal Revenue Code.

Need for Correction

As published, REG–161695–04 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed rulemaking by cross-reference to temporary regulations (REG–161695–04), which was the subject of FR Doc. E8–16664, is corrected as follows:

On page 42538, column 2, in the preamble, under the caption ''For Further Information Contact'', line 2, the language ''Amy Pfalzgraf, (202) 622–4950 (not a'' is corrected to read ''Amy Pfalzgraf (202) 622–4960 (not a''.

LaNita Van Dyke,

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

[FR Doc. E8–20552 Filed 9–4–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 0808061060–81062–01]

RIN 0648–AW77

Endangered and Threatened Species; Proposed Critical Habitat for the Gulf of Maine Distinct Population Segment of Atlantic Salmon

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), propose to designate critical habitat for the Gulf of Maine Distinct Population Segment (GOM DPS) of Atlantic salmon (*Salmo salar*). We previously determined that naturally spawned and several hatchery populations of Atlantic salmon which constituted the GOM DPS warrant listing as endangered under the Endangered Species Act of 1973, as amended (ESA). We are required to designate critical habitat for the GOM DPS as a result of this listing. We propose to designate as critical habitat 45 specific areas occupied by Atlantic salmon at the time of listing that comprise approximately 203,781 km of perennial river, stream, and estuary habitat and 868 square km of lake habitat within the range of the GOM DPS and on which are found those physical and biological features essential to the conservation of the species. The entire occupied range of the GOM DPS in which critical habitat is being proposed is within the State of Maine. We propose to exclude approximately 1,463 km of river, stream, and estuary habitat and 115 square km of lake habitat from critical habitat pursuant to section 4(b)(2) of the ESA.

DATES: Comments on this proposal must be received by November 4, 2008. Two public hearings on the proposed rule will be held in conjunction with the Atlantic salmon proposed listing rule (See the notice, Proposed Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon, published in the Proposed Rules section of the September 3, 2008, issue of the **Federal Register**) and we will alert the public of the locations and dates of those hearings in a subsequent **Federal Register** notice.

ADDRESSES: You may submit comments, identified by RIN 0648–AW77, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Assistant Regional Administrator, Protected Resources Division, NMFS, Northeast Regional Office, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930.
- Facsimile (fax) to: 207–866–7342, Attention: Dan Kircheis.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, Word Perfect, or Adobe PDF file formats only.

The proposed rule, list of references and supporting documents, including

the Biological Valuation, Economic Analysis, IRFA Analysis, and 4(b)(2) Report, are also available electronically at the NMFS Web site *http://www.nero.noaa.gov/prot_res/altsalmon/*.

FOR FURTHER INFORMATION CONTACT: Dan Kircheis, NMFS, at 207–866–7320, *dan.kircheis@noaa.gov*; Mary Colligan, NMFS, at 978–281–9116; or Marta Nammack, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

NMFS and the U.S. Fish and Wildlife Service (USFWS; collectively ''the Services'') issued a final rule listing the GOM DPS of Atlantic salmon as endangered on November 17, 2000 (65 FR 69459). The GOM DPS was defined in the 2000 rule as all naturally reproducing wild populations and those river-specific hatchery populations of Atlantic salmon, having historical river-specific characteristics found north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the U.S.-Canada border and the Penobscot River above the site of the former Bangor Dam.

In September of 2006, a new Status Review for Atlantic salmon in the United States (Status Review report) was made available to the public (*http://www.nmfs.noaa.gov/pr/pdfs/statusreviews/atlanticsalmon.pdf*). The 2006 Status Review report identified the GOM DPS of Atlantic salmon as being comprised of all anadromous Atlantic salmon whose freshwater range occurs in the watersheds of the Androscoggin River northward along the Maine coast to the Dennys River, including all associated conservation hatchery populations used to supplement natural populations; currently, such populations are maintained at Green Lake and Craig Brook National Fish Hatcheries. The most substantial difference between the 2000 GOM DPS and the GOM DPS described in the 2006 Status Review report is the inclusion of the Androscoggin, Kennebec, and Penobscot River basins. Subsequent to the 2006 Status Review report, the Services proposed to list Atlantic salmon in the GOM DPS as endangered (See the notice, Proposed Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon, published in the Proposed Rules section of the September 3, 2008, issue of the **Federal Register**).

This proposed rule would designate critical habitat for the GOM DPS pursuant to section 4(b)(2) of the ESA. Critical habitat is defined by section 3 of the ESA as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Section 3 of the ESA (16 U.S.C. 15332) defines the terms ''conserve,'' ''conserving,'' and ''conservation'' as ''to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.''

Section 4(b)(2) of the ESA (16 U.S.C. 1533) requires that, before designating critical habitat, we consider the economic impacts, impacts on national security, and other relevant impacts of specifying any particular area as critical habitat. Further, the Secretary may exclude any area from critical habitat upon a determination that the benefits of exclusion outweigh the benefits of inclusion, unless excluding an area from critical habitat will result in the extinction of the species concerned.

Once critical habitat for Atlantic salmon in the GOM DPS is designated, section 7(a)(2) of the ESA (16 U.S.C. 1536) requires that each Federal agency in consultation with and with the assistance of NMFS, ensure that any action it authorizes, funds, or carries out is not likely to result in the destruction or adverse modification of critical habitat.

This proposed rule summarizes the information gathered and the analyses conducted in support of the proposed designation, and announces our proposal to designate critical habitat for Atlantic salmon in the GOM DPS proposed for listing under ESA.

Atlantic Salmon Life History

Atlantic salmon have a complex life history that includes territorial rearing in rivers to extensive feeding migrations on the high seas. During their life cycle, Atlantic salmon go through several distinct phases that are identified by specific changes in behavior, physiology, morphology, and habitat requirements.

Adult Atlantic salmon return to rivers from the sea and migrate to their natal stream to spawn. Adults ascend the rivers of New England beginning in the spring. The ascent of adult salmon continues into the fall. Although spawning does not occur until late fall, the majority of Atlantic salmon in Maine enter freshwater between May and mid-July (Meister, 1958; Baum, 1997). Early migration is an adaptive trait that ensures adults have sufficient time to effectively reach spawning areas despite the occurrence of temporarily unfavorable conditions that occur naturally (Bjornn and Reiser, 1991). Salmon that return in early spring spend nearly 5 months in the river before spawning; often seeking cool water refuge (e.g., deep pools, springs, and mouths of smaller tributaries) during the summer months.

In the fall, female Atlantic salmon select sites for spawning. Spawning sites are positioned within flowing water, particularly where upwelling of groundwater occurs to allow for percolation of water through the gravel (Danie *et al.*, 1984). These sites are most often positioned at the head of a riffle (Beland *et al.*, 1982b), the tail of a pool, or the upstream edge of a gravel bar where water depth is decreasing, water velocity is increasing (McLaughlin and Knight, 1987; White, 1942), and hydraulic head allows for permeation of water through the redd (a gravel depression where eggs are deposited). Female salmon use their caudal fin to scour or dig redds. The digging behavior also serves to clean the substrate of fine sediments that can embed the cobble/gravel substrate needed for spawning and reduce egg survival (Gibson, 1993). As the female deposits eggs in the redd, one or more males fertilize the eggs (Jordan and Beland, 1981). The female then continues digging upstream of the last deposition site, burying the fertilized eggs with clean gravel. A single female may create several redds before depositing all of her eggs. Female anadromous Atlantic salmon produce a total of 1,500 to 1,800 eggs per kilogram of body weight, yielding an average of 7,500 eggs per 2 sea-winter (SW) female (an adult female that has spent two winters at sea before returning to spawn) (Baum and Meister, 1971). After spawning, Atlantic salmon may either return to sea immediately or remain in freshwater until the following spring before returning to the sea (Fay *et al.*, 2006). From 1967 to 2003, approximately 3 percent of the wild and naturally reared adults that returned to rivers where adult returns are monitored—mainly the Penobscot River—were repeat spawners (USASAC, 2004).

Embryos develop in the redd for a period of 175 to 195 days, hatching in late March or April (Danie *et al.*, 1983). Newly hatched salmon, referred to as

larval fry, alevin, or sac fry, remain in the redd for approximately 6 weeks after hatching and are nourished by their yolk sac (Gustafson-Greenwood and Moring, 1991). Survival from the egg to fry stage in Maine is estimated to range from 15 to 35 percent (Jordan and Beland, 1981). Survival rates of eggs and larvae are a function of stream gradient, overwinter temperatures, interstitial flow, predation, disease, and competition (Bley and Moring, 1988). Once larval fry emerge from the gravel and begin active feeding they are referred to as fry. The majority of fry (> 95 percent) emerge from redds at night (Gustafson-Marjanen and Dowse, 1983).

When fry reach approximately 4 cm in length, the young salmon are termed parr (Danie *et al.*, 1984). Parr have eight to eleven pigmented vertical bands on their sides that are believed to serve as camouflage (Baum, 1997). A territorial behavior, first apparent during the fry stage, grows more pronounced during the parr stage as the parr actively defend territories (Allen, 1940; Kalleberg, 1958; Danie *et al.*, 1984). Most parr remain in the river for 2 to 3 years before undergoing smoltification, the process in which parr go through physiological changes in order to transition from a freshwater environment to a saltwater marine environment. Some male parr may not go through smoltification and will become sexually mature and participate in spawning with sea-run adult females. These males are referred to as ''precocious parr.''

First year parr are often characterized as being small parr or 0+ parr (4 to 7 cm long), whereas second and third year parr are characterized as large parr (greater than 7 cm long) (Haines, 1992). Parr growth is a function of water temperature (Elliott, 1991), parr density (Randall, 1982), photoperiod (Lundqvist, 1980), interaction with other fish, birds, and mammals (Bjornn and Resier, 1991), and food supply (Swansburg *et al.*, 2002). Parr movement may be quite limited in the winter (Cunjak, 1988; Heggenes, 1990); however, movement in the winter does occur (Hiscock *et al.*, 2002) and is often necessary, as ice formation reduces total habitat availability (Whalen *et al.*, 1999a). Parr have been documented using riverine, lake, and estuarine habitats; incorporating opportunistic and active feeding strategies; defending territories from competitors including other parr; and working together in small schools to actively pursue prey (Gibson, 1993; Marschall *et al.*, 1998; Pepper, 1976; Pepper *et al.*, 1984; Hutchings, 1986; Erkinaro *et al.*, 1998; Halvorsen and Svenning, 2000; Hutchings, 1986; O'Connell and Ash, 1993; Erkinaro *et al.*, 1998; Dempson *et al.*, 1996; Halvorsen and Svenning, 2000; Klemetsen *et al.*, 2003).

In a parr's second or third spring (age 1 or age 2, respectively), when it has grown to 12.5 to 15 cm in length, a series of physiological, morphological, and behavioral changes occur (Schaffer and Elson, 1975). This process, called ''smoltification,'' prepares the parr for migration to the ocean and life in salt water. In Maine, the vast majority of naturally reared parr remain in freshwater for 2 years (90 percent or more) with the balance remaining for either 1 or 3 years (USASAC, 2005). In order for parr to undergo smoltification, they must reach a critical size of 10 cm total length at the end of the previous growing season (Hoar, 1988). During the smoltification process, parr markings fade and the body becomes streamlined and silvery with a pronounced fork in the tail. Naturally reared smolts in Maine range in size from 13 to 17 cm, and most smolts enter the sea during May to begin their first ocean migration (USASAC, 2004). During this migration, smolts must contend with changes in salinity, water temperature, pH, dissolved oxygen, pollution levels, and predator assemblages. The physiological changes that occur during smoltification prepare the fish for the dramatic change in osmoregulatory needs that come with the transition from a fresh to a salt water habitat (Ruggles, 1980; Bley, 1987; McCormick and Saunders, 1987; McCormick *et al.*, 1998). Smolts' transition into seawater is usually gradual as they pass through a zone of fresh and saltwater mixing that typically occurs in a river's estuary. Given that smolts undergo smoltification while they are still in the river, they are pre-adapted to make a direct entry into seawater with minimal acclimation (McCormick *et al.*, 1998). This pre-adaptation to seawater is necessary under some circumstances where there is very little transition zone between freshwater and the marine environment.

The spring migration of post-smolts out of the coastal environment is generally rapid, within several tidal cycles, and follows a direct route (Hyvarinen *et al.*, 2006; Lacroix and McCurdy, 1996; Lacroix *et al.*, 2004, 2005). Post-smolts generally travel out of coastal systems on the ebb tide, and may be delayed by flood tides (Hyvarinen *et al.*, 2006; Lacroix and McCurdy, 1996; Lacroix *et al.*, 2004, 2005); although Lacroix and McCurdy (1996) found that post-smolts exhibit active, directed swimming in areas with strong tidal currents. Studies in the Bay of Fundy and Passamaquoddy Bay suggest that post-smolts aggregate together and move near the coast in ''common corridors'' and that post-smolt movement is closely related to surface currents in the bay (Hyvarinen *et al.*, 2006; Lacroix and McCurdy, 1996; Lacroix *et al.*, 2004). European post-smolts tend to use the open ocean for a nursery zone, while North American post-smolts appear to have a more near-shore distribution (Friedland *et al.*, 2003). Post-smolt distribution may reflect water temperatures (Reddin and Shearer, 1987) and/or the major surface-current vectors (Lacroix and Knox, 2005). Post-smolts live mainly on the surface of the water column and form shoals, possibly of fish from the same river (Shelton *et al.*, 1997).

During the late summer/autumn of the first year, North American post-smolts are concentrated in the Labrador Sea and off of the west coast of Greenland, with the highest concentrations between 56 °N. and 58 °N. (Reddin, 1985; Reddin and Short, 1991; Reddin and Friedland, 1993). The salmon located off Greenland are composed of both 1SW fish and fish that have spent multiple years at sea (multi-sea winter fish, or MSW) immature salmon from both North American and European stocks (Reddin, 1988; Reddin *et al.*, 1988). The first winter at sea regulates annual recruitment, and the distribution of winter habitat in the Labrador Sea and Denmark Strait may be critical for North American populations (Friedland *et al.*, 1993). In the spring, North American post-smolts are generally located in the Gulf of St. Lawrence, off the coast of Newfoundland, and on the east coast of the Grand Banks (Reddin, 1985; Dutil and Coutu, 1988; Ritter, 1989; Reddin and Friedland, 1993; and Friedland *et al.*, 1999).

Some salmon may remain at sea for another year or more before maturing. After their second winter at sea, the salmon over-winter in the area of the Grand Banks before returning to their natal rivers to spawn (Reddin and Shearer, 1987). Reddin and Friedland (1993) found non-maturing adults located along the coasts of Newfoundland, Labrador, and Greenland, and in the Labrador and Irminger Sea in the later summer/autumn.

Critical Habitat

Methods and Criteria Used To Identify Proposed Critical Habitat

Critical habitat is defined by section 3 of the ESA (and 50 CFR 424.02(d)) as ''(i) the specific areas within the geographic area occupied by the species, at the time it is listed in accordance

with the provisions of [section 4 of this Act], on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of [section 4 of this Act], upon a determination by the Secretary that such areas are essential for the conservation of the species.'' The Department of the Interior and the Department of Commerce provide further regulatory guidance under 50 CFR 424.12(b), stating that the Secretaries shall ''focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species * * * Primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dry land, water quality or quantity, host species or plant pollinator[s], geological formation, vegetation type, tide, and specific soil types.''

Identifying the Geographical Area Occupied by the Species and Specific Areas Within the Geographical Area

To designate critical habitat for Atlantic salmon, as defined under Section 3(5)(A) of the ESA, we must identify specific areas within the geographical area occupied by the species at the time it is listed.

The geographic range occupied by the GOM DPS of Atlantic salmon includes freshwater habitat ranging from the Androscoggin River watershed in the south to the Dennys River watershed in the north (Fay *et al.*, 2006), as well as the adjacent estuaries and bays through which smolts and adults migrate.

The geographic range occupied by the species extends out to the waters off Canada and Greenland, where post-smolts complete their marine migration. However, critical habitat may not be designated within foreign countries or in other areas outside of the jurisdiction of the United States (50 CFR 424.12(h)). Therefore, for the purposes of critical habitat designation, the geographic area occupied by the species will be restricted to areas within the jurisdiction of the United States. This does not diminish the importance of habitat outside of the jurisdiction of the United States for the GOM DPS. In fact, a very significant factor limiting recovery for the species is marine survival. Marine migration routes and feeding habitat off Canada and Greenland are critical to the survival and recovery of Atlantic salmon, but the regulations prohibit designation of these areas as critical habitat.

Because Atlantic salmon are anadromous, spending a portion of life in freshwater and the remaining portion in the marine environment, it is conceivable that some freshwater habitat may be vacant for up to 3 years under circumstances where populations are extremely low. While there may be no documented spawning in these areas for that period of time, they would still be considered occupied because salmon at sea would return to these areas to spawn.

Current stock management and assessment efforts also need to be considered in deciding which areas are occupied. In addition to the stocking program managed by USFWS and the Maine Department of Marine Resources (MDMR), there are small-scale stocking efforts carried out by non profit organizations. Furthermore, in addition to stocking programs, straying from natural populations can result in the occupation of habitat.

Hydrologic Unit Code (HUC) 10 (Level 5 watersheds) described by Seaber *et al.* (1994) are proposed as the appropriate ''specific areas'' within the geographic area occupied by Atlantic salmon to be examined for the presence of physical or biological features and for the potential need for special management considerations or protections for these features.

The HUC system was developed by the United States Geological Survey (USGS) Office of Water Data Coordination in conjunction with the Water Resources Council (Seaber *et al.*, 1994) and provides (1) a nationally accessible, coherent system of water-use data exchange; (2) a means of grouping hydrographical data; and (3) a standardized, scientifically grounded reference system (Laitta *et al.*, 2004). The HUC system currently includes six nationally consistent, hierarchical levels of divisions, with HUC 2 (Level 1) ''Regions'' being the largest (avg. 459,878 sq. km.), and HUC 12 (Level 6) ''sub-watersheds'' being the smallest (avg. 41–163 sq. km.).

The HUC 10 (Level 5) watersheds were used to identify ''specific areas'' because this scale accommodates the local adaptation and homing tendencies of Atlantic salmon, and provides a framework in which we can reasonably aggregate occupied river, stream, lake, and estuary habitats that contain the physical and biological features essential to the conservation of the species. Furthermore, many Atlantic salmon populations within the GOM DPS are currently managed at the HUC 10 watershed scale. Therefore, we have a better understanding of the population status and the biology of salmon at the HUC 10 level, whereas less is known at the smaller HUC 12 sub-watershed scale.

Specific areas delineated at the HUC 10 watershed level correspond well to the biology and life history characteristics of Atlantic salmon. Atlantic salmon, like many other anadromous salmonids, exhibit strong homing tendencies (Stabell, 1984). Strong homing tendencies enhance a given individual's chance of spawning with individuals having similar life history characteristics (Dittman and Quinn, 1996) that lead to the evolution and maintenance of local adaptations, and may also enhance their progeny's ability to exploit a given set of resources (Gharrett and Smoker, 1993). Local adaptations allow local populations to survive and reproduce at higher rates than exogenous populations (Reisenbichler, 1988; Tallman and Healey, 1994). Strong homing tendencies have been observed in many Atlantic salmon populations. Stabell (1984) reported that fewer than 3 of every 100 salmon in North America and Europe stray from their natal river. In Maine, Baum and Spencer (1990) reported that 98 percent of hatchery-reared smolts returned to the watershed where they were stocked. Given the strong homing tendencies and life history characteristics of Atlantic salmon (Riddell and Leggett, 1981), we believe that the HUC 10 watershed level accommodates these local adaptations and the biological needs of the species and, therefore, is the most appropriate unit of habitat to delineate ''specific areas'' for consideration as part of the critical habitat designation process.

Within the United States, the freshwater geographic range that the GOM DPS of Atlantic salmon occupy includes perennial river, lake, stream and estuary habitat connected to the marine environment ranging from the Androscoggin River watershed to the Dennys River watershed. Within this range, HUC 10 watersheds were considered occupied if they contained either of the primary constituent elements (PCEs) (*e.g.*, sites for spawning and rearing or sites for migration, described in more detail below) along with the features necessary to support spawning, rearing and/or migration. Additionally, the HUC 10 watershed must meet either of the following criteria:

(a) Naturally spawned and reared Atlantic salmon have been documented in the HUC 10 watershed or the watershed is believed to be occupied

based on the biological valuation of HUC 10 watershed (See Biological Valuation of Atlantic Salmon Habitat in the Gulf of Maine Distinct Population Segment (2008)) and best professional judgment of state and Federal biologists;

(b) The area is currently managed by the MDMR and the USFWS through an active stocking program in an effort to enhance or restore Atlantic salmon populations, or the area has been stocked within the last 6 years through other stocking programs, including those efforts by the ''Fish Friends'' program, where juvenile salmon could reasonably be expected to migrate to the marine environment and return to that area as an adult and spawn.

Within the range of the GOM DPS, 105 HUC 10 watersheds were examined for occupancy based on the above criteria. Based on our analysis, we considered 48 of these HUC 10 watersheds within the geographic range to be occupied. Estuaries and bays within the occupied HUC 10s in the GOM DPS are also included in the geographic range occupied by the species.

Occupied areas also extend outside the estuary and bays of the GOM DPS as adults return from the marine environment to spawn and smolts migrate towards Greenland for feeding. We are not able at this time to identify the specific features characteristic of marine migration and feeding habitat within U.S. jurisdictional waters essential to the conservation of Atlantic salmon and are, therefore, unable to identify the specific areas where such features exist. Therefore, specific areas of marine habitat were not proposed as critical habitat.

Physical and Biological Features in Freshwater and Estuary Specific Areas Essential to the Conservation of the Species

We identify the physical and biological features essential for the conservation of Atlantic salmon that are found within the specific occupied areas identified in the previous section. To determine which features are essential to the conservation of the GOM DPS of Atlantic salmon, we first define what conservation means for this species. Conservation is defined in the ESA as using all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided by the ESA are no longer necessary. Conservation, therefore, describes those activities and efforts undertaken to achieve recovery. For the GOM DPS, we have determined that the successful return of adult salmon to spawning habitat, spawning, egg incubation and hatching, juvenile survival during the rearing time in freshwater, and smolt migration out of the rivers to the ocean are all essential to the conservation of Atlantic salmon. Therefore, we identify features essential to successful completion of these life cycle activities. Although successful marine migration is also essential to the conservation of the species, we are not able to identify the essential features of marine migration and feeding habitat at this time. Therefore, as noted above, marine habitat areas are not proposed for designation as critical habitat.

Within the occupied range of the Gulf of Maine DPS, Atlantic salmon PCEs include sites for spawning and incubation, sites for juvenile rearing, and sites for migration. The physical and biological features of the PCEs that allow these sites to be used successfully for spawning, incubation, rearing and migration are the features of habitat within the GOM DPS that are essential to the conservation of the species. A detailed review of the physical and biological features required by Atlantic salmon is provided in Kircheis and Liebich (2007). As stated above, Atlantic salmon also use marine sites for growth and migration; however, we did not identify critical habitat within the marine environment because the specific physical and biological features of marine habitat that are essential for the conservation of the GOM DPS (and the specific areas on which these features might be found) cannot be identified. Unlike Pacific salmonids, some of which use nearshore marine environments for juvenile feeding and growth, Atlantic salmon migrate through the nearshore marine areas quickly during the month of May and early June. Though we have some limited knowledge of the physical and biological features that the species uses in the marine environment, we have very little information on the specifics of these physical and biological features and how they may require special management considerations or protection. Therefore, we cannot accurately identify the specific areas where these features exist or what types of management considerations or protections may be necessary to protect these physical and biological features during the migration period.

Detailed habitat surveys have been conducted in some areas within the range of the GOM DPS of Atlantic salmon, providing clear estimates of and distinctions between those sites most suited for spawning and incubation and those sites most used for juvenile rearing. These surveys are most complete for seven coastal watersheds: Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap, and Sheepscot watersheds; and portions of the Penobscot Basin, including portions of the East Branch Penobscot, portions of the Piscataquis and Mattawamkeag, Kenduskeag Stream, Marsh Stream and Cove Brook; and portions of the Kennebec Basin, including a portion of the lower mainstem around the site of the old Edwards Dam and portions of the Sandy River. Throughout most of the range of the GOM DPS, however, this level of survey has not been conducted, and, therefore, this level of detail is not available. Therefore, to determine habitat quantity for each HUC 10 we relied on a GIS-based habitat prediction model (See appendix C of the Biological Valuation of Atlantic Salmon Habitat within the Gulf of Maine Distinct Population Segment (2008)). The model was developed using data from existing habitat surveys conducted in the Machias, Sheepscot, Dennys, Sandy, Piscataquis, Mattawamkeag, and Souadabscook Rivers. A combination of reach slope derived from contour and digital elevation model (DEM) datasets, cumulative drainage area, and physiographic province were used to predict the total amount of rearing habitat within a reach. These features help to reveal stream segments with gradients that would likely represent areas of riffles or fast moving water, habitat most frequently used for spawning and rearing of Atlantic salmon. The variables included in the model accurately predict the presence of rearing habitat approximately 73 percent of the time. We relied on the model to generate the habitat quantity present within each HUC 10 to provide consistent data across the entire DPS and on existing habitat surveys to validate the output of the model.

Although we have found the model to be nearly 75 percent accurate in predicting the presence of sites for spawning and rearing within specific areas, and we have an abundance of institutional knowledge on the physical and biological features that distinguish sites for spawning and sites for rearing, the model cannot be used to distinguish between sites for spawning and sites for rearing across the entire geographic range. This is because: (1) Sites used for spawning are also used for rearing; and (2) the model is unable to identify substrate features most frequently used for spawning activity, but rather uses landscape features to identify where stream gradient conducive to both spawning and rearing activity exists. As such, we have chosen to group sites for

spawning and sites for rearing into one PCE. Therefore, sites for spawning and sites for rearing are discussed together throughout this analysis as sites for spawning and rearing.

In the section below, we identify the essential physical and biological features of spawning and rearing sites and migration sites found in the occupied areas described in the previous section.

(A). Physical and Biological Features of the Spawning and Rearing PCE

1. *Deep, oxygenated pools and cover (e.g., boulders, woody debris, vegetation, etc.), near freshwater spawning sites, necessary to support adult migrants during the summer while they await spawning in the fall.* Adult salmon can arrive at spawning grounds several months in advance of spawning activity. Adults that arrive early require holding areas in freshwater and estuarine areas that provide shade, protection from predators, and protection from other environmental variables such as high flows, high temperatures, and sedimentation. Early migration is an adaptive trait that ensures adults sufficient time to reach spawning areas despite the occurrence of temporarily unfavorable conditions that occur naturally (Bjornn and Reiser, 1991). Salmon that return in early spring spend nearly 5 months in the river before spawning, often seeking cool water refuge (*e.g.*, deep pools, springs, and mouths of smaller tributaries) during the summer months. Large boulders or rocks, overhanging trees, logs, woody debris, submerged vegetation and undercut banks provide shade, reduce velocities needed for resting, and offer protection from predators (Giger, 1973). These features are essential to the conservation of the species to help ensure the survival and successful spawning of adult salmon.

2. *Freshwater spawning sites that contain clean, permeable gravel and cobble substrate with oxygenated water and cool water temperatures to support spawning activity, egg incubation, and larval development.* Spawning activity in the Gulf of Maine DPS of Atlantic salmon typically occurs between mid-October and mid-November (Baum, 1997) and is believed to be triggered by a combination of water temperature and photoperiod (Bjornn and Reiser, 1991). Water quantity and quality, as well as substrate type, are important for successful Atlantic salmon spawning. Water quantity can determine habitat availability, and water quality may influence spawning success. Substrate often determines where spawning occurs, and cover can influence survival rates of both adults and newly hatched salmon.

Preferred spawning habitat contains gravel substrate with adequate water circulation to keep buried eggs well oxygenated (Peterson, 1978). Eggs in a redd are entirely dependent upon sub-surface movement of water to provide adequate oxygen for survival and growth (Decola, 1970). Water velocity and permeability of substrate allow for adequate transport of well-oxygenated water for egg respiration (Wickett, 1954) and removal of metabolic waste that may accumulate in the redd during egg development (Decola, 1970; Jordan and Beland, 1981). Substrate permeability as deep as the egg pit throughout the incubation period is important because eggs are typically deposited at the bottom of the egg pit.

Dissolved oxygen (DO) content is important for proper embryonic development and hatching. Embryos can survive when DO concentrations are below saturation levels, but their development is often subnormal due to delayed growth and maturation, performance, or delayed hatching (Doudoroff and Warren, 1965). In addition, embryos consume more oxygen (*i.e.*, the metabolism of the embryo increases) when temperature increases (Decola, 1970). An increase in water temperature, however, decreases the amount of oxygen that the water can hold. During the embryonic stage when tissue and organs are developing and the demand for oxygen is quite high, embryos can only tolerate a narrow range of temperatures.

These sites are essential for the conservation of the species because without them embryo development would not be successful.

3. *Freshwater spawning and rearing sites with clean, permeable gravel and cobble substrate with oxygenated water and cool water temperatures to support emergence, territorial development and feeding activities of Atlantic salmon fry.* The period of emergence and the establishment of feeding territories is a critical period in the salmon life cycle since at this time mortality can be very high. When fry leave the redd, they emerge through the interstitial spaces in the gravel to reach the surface. When the interstitial spaces become embedded with fine organic material or fine sand, emergence can be significantly impeded or prevented. Newly emerged fry prefer shallow, low velocity, riffle habitat with a clean gravel substrate. Territories are quickly established by seeking out areas of low velocities that occur in eddies in front of or behind larger particles that are embedded in areas of higher velocities to maximize drift of prey sources (Armstrong *et al.*, 2002). Once a territory has been established, fry use a sit-and-wait strategy, feeding opportunistically on invertebrate drift. This strategy enables the fish to minimize energy expenditure while maximizing energy intake (Bachman, 1984).

These sites are essential for the conservation of the species because without them fry emergence would not be successful.

4. *Freshwater rearing sites with space to accommodate growth and survival of Atlantic salmon parr.* When fry reach approximately 4 cm in length, the young salmon are termed parr (Danie *et al.*, 1984). The habitat in Maine rivers currently supports on average between five and ten large parr (age one or older) per 100 square meters of habitat, or one habitat unit (Elson, 1975; Baum, 1997). The amount of space available for juvenile salmon occupancy is a function of biotic and abiotic habitat features, including stream morphology, substrate, gradient, and cover; the availability and abundance of food; and the makeup of predators and competitors (Bjornn and Reiser, 1991). Further limiting the amount of space available to parr is their strong territorial instinct. Parr actively defend territories against other fish, including other parr, to maximize their opportunity to capture prey items. The size of the territory that a parr will defend is a function of the size and density of parr, food availability, the size and roughness of the substrate, and current velocity (Kalleberg, 1958; Grant *et al.*, 1998). The amount of space needed by an individual increases with age and size (Bjornn and Reiser, 1991). Cover, including undercut banks, overhanging trees and vegetation, diverse substrates and depths, and some types of aquatic vegetation, can make habitat suitable for occupancy (Bjornn and Reiser, 1991). Cover can provide a buffer against extreme temperatures; protection from predators; increased food abundance; and protection from environmental variables such as high flow events and sedimentation.

These features are essential to the conservation of the species because without them, juvenile salmon would have limited areas for foraging and protection from predators.

5. *Freshwater rearing sites with a combination of river, stream, and lake habitats that accommodate parr's ability to occupy many niches and maximize parr production.* Parr prefer, but are not limited to, riffle habitat associated with diverse rough gravel substrate. The preference for these habitats by parr that use river and stream habitats supports a sit-and-wait feeding strategy intended to

minimize energy expenditure while maximizing growth. Overall, large Atlantic salmon parr using river and stream habitats select for diverse substrates that predominately consist of boulder and cobble (Symons and Heland, 1978; Heggenes, 1990; Heggenes *et al.*, 1999).

Parr can also move great distances into or out of tributaries and mainstems to seek out habitat that is more conducive to growth and survival (McCormick *et al.*, 1998). This occurs most frequently as parr grow and they move from their natal spawning grounds to areas that have much rougher substrate, providing more suitable over-wintering habitat and more food organisms (McCormick *et al.*, 1998). In the fall, large parr that are likely to become smolts the following spring have been documented leaving summer rearing areas in some headwater tributaries and migrating downstream, though not necessarily entering the estuary or marine environment (McCormick *et al.*, 1998).

Though parr are typically stream dwellers, they also use pools within rivers and streams, dead-waters (sections of river or stream with very little to no gradient), and lakes within a river system as a secondary nursery area after emergence (Cunjak, 1996; Morantz *et al.*, 1987; Erkinaro *et al.*, 1998). It is known that parr will use pool habitats during periods of low water, most likely as refuge from high temperatures (McCormick *et al.*, 1998) and during the winter months to minimize energy expenditure and avoid areas that are prone to freezing or de-watering (Rimmer *et al.*, 1984). Salmon parr may also spend weeks or months in the estuary during the summer (Cunjak *et al.*, 1989, 1990; Power and Shooner, 1966).

These areas are essential to the conservation of the species to ensure survival and species persistence when particular habitats become less suitable or unsuitable for survival during periods of extreme conditions such as extreme high temperatures, extreme low temperatures, and droughts.

6. *Freshwater rearing sites with cool, oxygenated water to support growth and survival of Atlantic salmon parr.* Atlantic salmon are cold water fish and have a thermal tolerance zone where activity and growth is optimal (Decola, 1970). Small parr and large parr have similar temperature tolerances (Elliott, 1991). Water temperature influences growth, survival, and behavior of juvenile Atlantic salmon. Juvenile salmon can be exposed to very warm temperatures (> 20 °C) in the summer and near-freezing temperatures in the winter, and have evolved with a series of physiological and behavioral strategies that enable them to adapt to the wide range of thermal conditions that they may encounter. Parr's optimal temperature for feeding and growth ranges from 15 to 19 °C (Decola, 1970). When water temperatures surpass 19 °C, feeding and behavioral activities are directed towards maintenance and survival. During the winter when temperatures approach freezing, parr reduce energy expenditures by spending less time defending territories, feeding less, and moving into slower velocity microhabitats (Cunjak, 1996).

Oxygen consumption by parr is a function of temperature. As temperature increases, the demand for oxygen increases (Decola, 1970). Parr require highly oxygenated waters to support their active feeding strategy. Though salmon parr can tolerate oxygen levels below 6mg/l, both swimming activity and growth rates are restricted.

These features are essential to the conservation of the species because high and low water temperatures and low oxygen concentrations can result in the cessation of feeding activities necessary for juvenile growth and survival and can result in direct mortality.

7. *Freshwater rearing sites with diverse food resources to support growth and survival of Atlantic salmon parr.* Atlantic salmon require sufficient energy to meet their basic metabolic needs for growth and reproduction (Spence *et al.*, 1996). Parr largely depend on invertebrate drift for foraging, and actively defend territories to assure adequate food resources needed for growth. Parr feed on larvae of mayflies, stoneflies, chironomids, caddisflies, blackflies, aquatic annelids, and mollusks, as well as numerous terrestrial invertebrates that fall into the river (Scott and Crossman, 1973; Nislow *et al.*, 1999). As parr grow, they will occasionally eat small fishes, such as alewives, dace, or minnows (Baum, 1997).

Atlantic salmon attain energy from food sources that originate from both allochthonous (outside the stream) and autochthonous (within the stream) sources. What food is available to parr and how food is obtained is a function of a river's hydrology, geomorphology, biology, water quality, and connectivity (Annear *et al.*, 2004). The riparian zone is a fundamental component to both watershed and ecosystem function, as it provides critical physical and biological linkages between terrestrial and aquatic environments (Gregory *et al.*, 1991). Flooding of the riparian zone is an important mechanism needed to support the lateral transport of nutrients from the floodplain back to the river (Annear *et al.*, 2004). Lateral transport of nutrients and organic matter from the riparian zone to the river supports the growth of plant, plankton, and invertebrate communities. Stream invertebrates are the principal linkage between the primary producers and higher trophic levels, including salmon parr.

These features are essential to the conservation of the species, as parr require these food items for growth and survival.

(B). Physical and Biological Features of the Migration PCE

1. *Freshwater and estuary migratory sites free from physical and biological barriers that delay or prevent access of adult salmon seeking spawning grounds needed to support recovered populations.* Adult Atlantic salmon returning to their natal rivers or streams require migration sites free from barriers that obstruct or delay passage to reach their spawning grounds at the proper time for effective spawning (Bjornn and Reiser, 1991). Physical and biological barriers within migration sites can prevent adult salmon from effectively spawning either by preventing access to spawning habitat or impairing a fish's ability to spawn effectively by delaying migration or impairing the health of the fish. Migration sites free from physical and biological barriers are essential to the conservation of the species because without them, adult Atlantic salmon would not be able to access spawning grounds needed for egg deposition and embryo development.

2. *Freshwater and estuary migration sites with pool, lake, and instream habitat that provide cool, oxygenated water and cover items (e.g., boulders, woody debris, and vegetation) to serve as temporary holding and resting areas during upstream migration of adult salmon.* Atlantic salmon may travel as far as 965 km upstream to spawn (New England Fisheries Management Council, 1998). During migration, adult salmon require holding and resting areas that provide the necessary cover, temperature, flow, and water quality conditions needed to survive. Holding areas can include areas in rivers and streams, lakes, ponds, and even the ocean (Bjornn and Reiser, 1991). Holding areas are necessary below temporary seasonal migration barriers such as those created by flow, temperature, turbidity, and temporary obstructions such as debris jams and beaver dams, and adjacent to spawning areas. Adult salmon can become fatigued when ascending high velocity riffles or falls and require resting areas

within and around high velocity waters where they can recover until they are able to continue their migration. Holding areas near spawning areas are necessary when upstream migration is not delayed and adults reach spawning areas before they are ready to spawn.

These features are essential to the conservation of the species because without them, adult Atlantic salmon would be subject to fatigue, predation, and mortality from exposure to unfavorable conditions, significantly reducing spawning success.

3. *Freshwater and estuary migration sites with abundant, diverse native fish communities to serve as a protective buffer against predation.* Adult Atlantic salmon and Atlantic salmon smolts interact with other diadromous species indirectly. Adult and smolt migration through the estuary often coincides with the presence of alewives (*Alosa* spp.), American shad (*Alosa sapidissima*), blueback herring (*Alosa aestivalis*), and striped bass (*Morone saxatilis*). The abundance of diadromous species present during adult migration may serve as an alternative prey source for seals, porpoises and otters (Saunders *et al.*, 2006). As an example, pre-spawned adults enter rivers and begin their upstream spawning migration at approximately the same time as early migrating adult salmon (Fay *et al.*, 2006). Historically, shad runs were considerably larger than salmon runs (Atkins and Foster, 1869; Stevenson, 1898). Thus, native predators of medium to large size fish in the estuarine and lower river zones could have preyed on these 1.5 to 2.5 kg size fish readily (Fay *et al.*, 2006; Saunders *et al.*, 2006). In the absence or reduced abundance of these diadromous fish communities, it would be expected that Atlantic salmon will likely become increasingly targeted as forage by large predators (Saunders *et al.*, 2006).

As Atlantic salmon smolts pass through the estuary during migration from their freshwater rearing sites to the marine environment, they experience high levels of predation. Predation rates through the estuary often result in up to 50 percent mortality during this transition period between freshwater to the marine environment (Larsson, 1985). There is, however, large annual variation in estuarine mortality, which is believed to be dependent upon the abundance and availability of other prey items including alewives, blueback herring, and American shad, as well as the spatial and temporal distribution and abundance of predators (Anthony, 1994).

The presence and absence of co-evolutionary diadromous species such as alewives, blueback herring, and American shad likely play an important role in mitigating the magnitude of predation on smolts from predators such as striped bass, double-crested cormorants (*Phalacrocorax auritus*), and ospreys (*Pandion haliaetus*). The migration time of pre-spawned adult alewives overlaps in time and space with the migration of Atlantic salmon smolts (Saunders *et al.*, 2006). Given that when alewife populations are robust, alewife numbers not only likely greatly exceed densities of Atlantic salmon smolts, making them more available to predators, but the caloric content per individual alewife is greater than that of an Atlantic salmon smolt (Schulze, 1996), likely making the alewife a more desirable prey species (Saunders *et al.*, 2006).

These features are essential to the conservation of the species because without highly prolific abundant alternate prey species such as alewives and shad, the less prolific Atlantic salmon will likely become a preferred prey species.

4. *Freshwater and estuary migration sites free from physical and biological barriers that delay or prevent emigration of smolts to the marine environment.* Atlantic salmon smolts require an open migration corridor from their juvenile rearing habitat to the marine environment. Seaward migration of smolts is initiated by increases in river flow and temperature in the early spring (McCleave, 1978; Thorpe and Morgan, 1978). Migration through the estuary is believed to be the most challenging period for smolts (Lacroix and McCurdy, 1996). Although it is difficult to generalize migration trends because of the variety of estuaries, Atlantic salmon post-smolts tend to move quickly through the estuary and enter the ocean within a few days or less (Lacroix *et al.*, 2004; Hyvarinen *et al.*, 2006; McCleave, 1978). In the upper estuary, where river flow is strong, Atlantic salmon smolts use passive drift to travel (Moore *et al.*, 1995; Fried *et al.*, 1978; LaBar *et al.*, 1978). In the lower estuary smolts display active swimming, although their movement is influenced by currents and tides (Lacroix and McCurdy 1996; Moore *et al.*, 1995; Holm *et al.*, 1982; Fried *et al.*, 1978). In addition, although some individuals seem to utilize a period of saltwater acclimation, some fish have no apparent period of acclimation (Lacroix *et al.*, 2004). Stefansson *et al.*, (2003) found that post-smolts adapt to seawater without any long-term physiological impairment. Several studies also suggest that there is a ''survival window'' which is open for several weeks in the spring, and gradually closes through the summer, during which time salmon can migrate more successfully (Larsson, 1977; Hansen and Jonsson, 1989; Hansen and Quinn, 1998).

These features are essential to the conservation of the species because a delay in migration of smolts can result in the loss of the smolts' ability to osmoregulate in the marine environment which is necessary for smolt survival.

5. *Freshwater and estuary migration sites with sufficiently cool water temperatures and water flows that coincide with diurnal cues to stimulate smolt migration.* The process of smoltification is triggered in response to environmental cues. Photoperiod and temperature have the greatest influence on regulating the smolting process. Increase in day length is necessary for smolting to occur (Duston and Saunders, 1990). McCormick *et al.* (1999) noted that in spite of wide temperature variations among rivers throughout New England, almost all smolt migrations begin around the first of May and are nearly complete by the first week in June. However, the time that it takes for the smoltification process to be completed appears to be closely related to water temperature. When water temperatures increase, the smolting process is advanced, evident by increases in Na+, K+-ATPase activity—the rate of exchange of sodium (Na+) and potassium (K+) ions across the gill membrane or the regulation of salts that allow smolts to survive in the marine environment (Johnston and Saunders, 1981; McCormick *et al.*, 1998; McCormick *et al.*, 2002). In addition to playing a role in regulating the smoltification process, high temperatures also are responsible for the cessation of Na+, K+-ATPase activity of smolts limiting their ability to excrete excess salts when they enter the marine environment. McCormick *et al.*, (1999) found significant decreases in Na+, K+-ATPase activity in smolts at the end of the migration period, but also found that smolts in warmer rivers had reductions in Na+, K+-ATPase activity earlier then smolts found in colder rivers. Hence any delay of migration has the potential to reduce survival of out-migrating smolts because as water temperatures rise over the spring migration period, smolts experience a reduction in Na+, K+-ATPase reducing their ability to regulate salts as they enter the marine environment. Though flow does not appear to play a role in the smoltification process, flow does appear to play an important role in stimulating a migration response (Whalen *et al.*, 1999b).

These features are essential to the conservation of the species because elevated water temperatures that occur in advance of a smolts diurnal cues to migrate can result in a decreased migration window in which smolts are capable of transitioning into the marine environment. A decrease in the migration window has the potential to reduce survival of smolts especially for fish with greater migration distances.

6. *Freshwater migration sites with water chemistry needed to support sea water adaptation of smolts.* The effects of acidity on Atlantic salmon have been well documented. The effects of acidity cause ionoregulatory failure in Atlantic salmon smolts while in freshwater (Rosseland and Skogheim, 1984; Farmer *et al.*, 1989; Staurnes *et al.*, 1996; Staurnes *et al.*, 1993). This inhibition of gill Na+, K+-ATPase activity can cause the loss of plasma ions and may result in reduced seawater tolerance (Rosseland and Skogheim, 1984; Farmer *et al.*, 1989; Staurnes *et al.*, 1996; Staurnes *et al.*, 1993) and increased cardiovascular disturbances (Milligan and Wood 1982; Brodeur *et al.*, 1999). Parr undergoing parr/smolt transformation become more sensitive to acidic water, hence water chemistry that is not normally regarded as toxic to other salmonids may be toxic to smolts (Staurnes *et al.*, 1993, 1995). This is true even in rivers that are not chronically acidic and not normally considered as being in danger of acidification (Staurnes *et al.*, 1993, 1995). Atlantic salmon smolts are most vulnerable to low pH in combination with elevated levels of monomeric labile species of aluminum (aluminum capable of being absorbed across the gill membrane) and low calcium (Rosseland and Skogheim, 1984; Rosseland *et al.*, 1990; Kroglund and Staurnes, 1999).

These features are essential to the conservation of the species because Atlantic salmon smolts exposed to acidic waters can lose sea water tolerance, which can result in direct mortality or indirect mortality from altered behavior and fitness.

Special Management Considerations or Protections

Specific areas within the geographic area occupied by a species may be designated as critical habitat only if they contain physical or biological features essential to the conservation of the species that ''may require special management considerations or protection.'' It is the features and not the specific areas that are the focus of the ''may require'' provision. Use of the disjunctive ''or'' also suggests the need to give distinct meaning to the terms ''special management considerations'' and ''protection''. ''Protection'' suggests actions to address a negative impact. ''Management'' seems broader than protection, and could include active manipulation of the feature or aspects of the environment. The ESA regulations at 50 CFR 424.02(j) further define special management considerations as ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species''. The term ''may'' was the focus of two Federal district courts that ruled that features can meet this provision because of either a present requirement for special management considerations or protection or possible future requirements (see *Center for Biol. Diversity* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003); *Cape Hatteras Access Preservation Alliance* v. *DOI,* 344 F. Supp. 108 (D.D.C. 2004)). The Arizona district court ruled that the provision cannot be interpreted to mean that features already covered by an existing management plan must be determined to require additional special management, because the term additional is not in the statute. Rather, the court ruled that the existence of management plans may be evidence that the features in fact require special management (*Center for Biol. Diversity* v. *Norton,* 1096–1100).

The primary impacts of critical habitat designation result from the consultation requirements of ESA section 7(a)(2). Federal agencies must consult with NMFS to ensure that their actions are not likely to result in the destruction or adverse modification of critical habitat (or jeopardize the species' continued existence). These impacts are attributed only to the designation (i.e., are incremental impacts of the designation) if Federal agencies modify their proposed actions to ensure they are not likely to destroy or adversely modify the critical habitat beyond any modifications they would make because of listing and the requirement to avoid jeopardy. Incremental impacts of designation include state and local protections that may be triggered as a result of designation, and education of the public about to the importance of an area for species conservation. When a modification is required due to impacts both to the species and critical habitat, the impact of the designation is considered to be co-extensive with ESA listing of the species.

The draft ESA 4(b)(2) (NMFS, 2008) Report and Economic Analysis (IEc, 2008a) describe the impacts in detail. These reports identify and describe potential future Federal activities that would trigger section 7 consultation requirements because they may affect the essential physical and biological features.

We identified a number of activities and associated threats that may affect the PCEs and associated physical and biological features essential to the conservation of Atlantic salmon within the occupied range of the GOM DPS. These activities, which include agriculture, forestry, changing land-use and development, hatcheries and stocking, roads and road crossings, mining, dams, dredging, and aquaculture have the potential to reduce the quality and quantity of the PCEs and their associated physical and biological features. There are other threats to Atlantic salmon habitat including acidification of surface waters. However, we are not able to clearly separate out the specific activities responsible for acidification, and therefore are unable to specifically identify a federal nexus.

Specific activities that may affect the PCEs and associated physical and biological features are evaluated below based on whether the spawning and rearing PCE and/or the migration PCE may require special management considerations or protection. Specific areas where these activities occur are represented in a table following the evaluation of activities. Further evaluation of the activities listed below is presented in detail in section 5 of Kircheis and Liebich (2007).

(a). Agriculture

Agricultural practices influence all specific areas proposed for designation and negatively impact PCE sites for spawning and rearing and migration. Physical disturbances caused by livestock and equipment associated with agricultural practices can directly impact the habitat of aquatic species (USEPA, 2003). Traditional agricultural practices require repeated mechanical mixing, aeration, and application of fertilizers and pesticides to soils. These activities alter physical soil characteristics and microorganisms. Tilling aerates the upper soil, but causes compaction of finely textured soils below the surface, which alters water infiltration. Use of heavy farm equipment and construction of roads also compact soils, decrease water infiltration, and increase surface runoff (Spence *et al.*, 1996). Agricultural grazing and clearing of riparian vegetation can expose soils and increase soil erosion and sediment inputs into rivers.

Agricultural practices may also reduce habitat complexity and channel stability through physical stream alterations such as: Channelization, bank armoring, and removal of large woody debris (LWD) and riparian vegetation (Spence *et al.*, 1996). These effects often result in streams with higher width to depth ratios which exhibit more rapid temperature fluctuations and may also be subject to increased embeddedness as a function of decreased water velocity affecting habitat use in sites for spawning, juvenile rearing, and migration (Fay *et al.*, 2006).

Clearing of land for agricultural practices such as livestock grazing and crop cultivation typically loosens and smoothes land surfaces, increasing soil mobility and vulnerability to surface erosion, thereby increasing sedimentation rates in affected streams (Waters, 1995; Spence *et al.*, 1996). Increased sedimentation can have significant effects on Atlantic salmon habitat by embedding substrates and increasing turbidity in spawning and rearing sites. Increased turbidity can reduce light penetration and result in a reduction of aquatic plant communities used for cover and foraging in juvenile rearing sites. Sedimentation from agricultural practices can also increase the inputs of nutrients such as phosphorus and ammonia as well as contaminants such as pesticides and herbicides throughout a watershed. An increase in nutrients can lead to eutrophication and potential oxygen depletion in surface waters. Exposure of contaminated sediments to anaerobic environments (lacking oxygen) often results in the release of organically bound chemicals (EPA, 2003), possibly creating a toxic environment for biotic communities downstream of these agricultural areas.

Agricultural practices can affect stream hydrology through removal of vegetative cover, soil compaction, and irrigation. Removal of vegetation and soil compaction can increase runoff which can increase the frequency and intensity of flooding (Hornbeck *et al.*, 1970). Increases in frequency and intensity of flood events can increase erosion, increase sedimentation and scour affecting sites for spawning and rearing. Direct water withdrawals and ground-water withdrawals for crop irrigation can directly impact Atlantic salmon habitat by depleting stream-flow (MASTF, 1997; Dudley and Stewart 2006; Fay *et al.*, 2006). Currently, the cumulative effects of individual irrigation impacts on Maine rivers is poorly understood; however, it is known that adequate water supply and quality are essential to all life stages of Atlantic salmon and life history behaviors including adult migration, spawning, fry emergence, and smolt emigration (Fay *et al.*, 2006).

Fertilizer runoff can increase nutrient loading in aquatic systems, thereby stimulating the growth of aquatic algae. If nutrient loading due to fertilizer run-off is significant, resulting algal blooms may have numerous detrimental impacts on multiple processes occurring within the affected aquatic ecosystem. Surface algal blooms that block sunlight can kill submerged aquatic vegetation important for juvenile rearing. Loss of submerged vegetation can lead to a loss of habitat for invertebrates and juveniles fishes and the decomposition of dead algae consumes large quantities of oxygen, an impact which, at times, can result in significant oxygen depletion (NMFS and FWS, 2005). A reduction in submerged aquatic vegetation and dissolved oxygen (DO) can cause both direct and indirect harm to salmon by affecting not only the physiological function of salmon (e.g., oxygen deprivation) but by impacting prey species and other necessary ecological functions sites for rearing. We conclude that the spawning and rearing and migration PCEs in each HUC 10 are and will likely continue to be negatively affected by agricultural practices well into the future, and, therefore, may require special management or protections which may include increasing the riparian buffer between agriculture lands and aquatic ecosystems that contain salmon habitat to prevent erosion and the runoff or leaching of contaminants and nutrients.

(b). Forestry

Forestry practices influence all specific areas proposed for designation and negatively impact PCE sites for spawning and rearing and migration. Timber harvest can significantly affect hydrologic processes. In general, timber removal increases the amount of water that infiltrates the soil and reaches the stream by reducing water losses from evapotranspiration (Spence *et al.*, 1996). Soil compaction can decrease infiltration and increase runoff, and roads created for logging can divert and alter water flow. Logging can also influence snow distribution on the ground, and consequently alter the melting rates of the snowpack (Chamberlin *et al.*, 1991). Through a combination of these effects, logging can change annual water yield and the magnitude and timing of peak and low flows (Spence *et al.*, 1996). Alteration of hydrologic regimes may impact sites for spawning, migration and rearing.

The increased erosion and runoff caused by forestry practices and road building can increase sedimentation affecting sites for spawning and rearing and may impact migration. Compared to other forestry activities, roads are the greatest contributor of sediment on a per area basis (Furniss *et al.*, 1991). Contribution of sediments by roads most frequently occurs from mass failure of road beds (Furniss *et al.*, 1991). Other forestry practices generally cause surface erosion, creating chronic sediment inputs. The combined effect of chronic and mass erosion can cause elevated sediment levels even when a small percentage of a watershed is developed by roads (Montgomery and Buffington, 1993), which can embed cobble and gravel substrates used for spawning and juvenile rearing.

The most direct effect of logging on stream temperature is the reduction in shade provided by riparian vegetation. Alterations in water temperature can affect egg development and alter foraging behaviors of juvenile salmon in both spawning and rearing sites. Removal of riparian vegetation also affects evaporation, convection and advection of water by altering wind speed and the temperature of surrounding land areas (Beschta *et al.*, 1987, 1995). In general, greater effects on stream temperatures are more apparent in smaller streams; however, the magnitude of these effects is dependent on stream size and channel morphology in relation to the quantity of riparian vegetation harvested (Beschta *et al.*, 1995). Removal of riparian vegetation can also lead to increased maximum temperatures and increased daily fluctuations in stream temperatures (Beschta *et al.*, 1987, 1995).

Timber harvest and preparation of soil for forestry practices can decrease LWD as well as increase erosion. Removal of LWD and increased erosion can have many harmful effects in sites for rearing, spawning and migration by reducing channel complexity, reducing in-stream cover and riffle/pool frequency, decreasing sediment retention and channel stability and reducing availability of microhabitats (Spence *et al.*, 1996). Loss of riparian vegetation can also reduce the presence of overhanging banks that are frequently used for cover by salmon (Spence *et al.*, 1996). We conclude that the spawning, rearing and migration PCEs in each specific area are and will likely continue to be negatively affected by forestry practices, and, therefore, may require special management considerations or protections which may include the use of best management

practices that reduce erosion, support contributions of LWD, and limit thermal impacts.

(c). Changing Land-Use and Development

Changing land-use and development affects all specific areas proposed for designation and negatively impact PCE sites for spawning, rearing and migration. Changing land-use patterns include a shift from forestry and agriculture to construction of housing, commercial shopping and business centers, and industrial facilities. Increased development and population growth can cause declines in water and habitat quality caused by increases in erosion, reduction of riparian vegetation, increases in sediment deposition, homogenizing of habitat features, and an overall reduction in water quality resulting from point and non-point source pollution.

Development can affect sites for spawning, rearing and migration by reducing soil infiltration rates and increasing erosion. Construction of impervious surfaces can indirectly influence habitat by increasing surface water runoff while concurrently reducing groundwater recharge. Surface runoff from developed areas can increase erosion rates, carry pollutants from developed areas, and increase flooding (Morse and Kahl, 2003), whereas a reduction in groundwater recharge can lead to reduced summer baseflows, potentially reducing available aquatic habitat (Morse and Kahl, 2003).

Development practices can redirect, channelize, and/or armor stream banks to accommodate and protect the development. Certain development practices can clear riparian areas, decreasing shade and altering thermal regimes and nutrient inputs. These practices can also remove vegetation that would otherwise intercept rainfall and therefore reduce runoff. As more water is carried downstream during rain events or when stream channels are altered, streambed widening or scouring may increase. Streambed widening or scouring can directly reduce the quality and quantity of habitat available to Atlantic salmon. As a result, development can lead to alterations in physical habitat within sites for spawning, rearing and migration. We conclude that the spawning, rearing and migration PCEs in each HUC 10 are and will likely continue to be negatively affected by contaminants into the future, and, therefore, may require special management considerations or protections which may include improvements in the handling of waste water discharge to limit inputs of contaminants and assuring sufficient riparian buffers between development sites and aquatic ecosystems that support salmon habitats.

(d). Hatcheries and Stocking

Hatcheries and stocking occur in all specific areas proposed for designation and can negatively affect PCE sites for spawning and rearing. Use of hatcheries may be essential for rebuilding Atlantic salmon populations; however, without proper adherence to genetic, evolutionary, and ecological principles, the use of hatcheries could have adverse consequences for naturally reproducing fish that may undermine other rehabilitation efforts. Stocking of juvenile Atlantic salmon that are river specific, non-river specific, or a combination of both, is taking place in many rivers within the range of the GOM DPS. Captive-reared adult brood stock are also being stocked back into their natal rivers in small numbers in most rivers within this range (NRC, 2004). Smallmouth bass (*Micropterus dolomieui*) and chain pickerel (*Esox niger*), important non-native predators of juvenile salmon, have also been introduced throughout a large portion of the range of the GOM DPS (Fay *et al.*, 2006). These species, along with a host of other native and non-native fish, may compete for food and space with Atlantic salmon in freshwater, affecting sites for juvenile rearing and spawning. We conclude that the spawning and rearing PCEs in each specific area are and will likely continue to be negatively affected by hatcheries and stocking, and, therefore, may require special management considerations or protections. Management considerations or protections may include efforts that employ genetic and stock management of Atlantic salmon such that stocked fish do not present a genetic or competitive risk to natural populations, and stocking of other species that do not introduce threats of predation, competition, genetics or disease.

(e). Roads and Road Crossings and Other In-Stream Activities

Roads and road crossings occur in all specific areas proposed for designation and negatively affect sites for spawning and rearing, and sites for migration. Roads, which are typically built in association with logging, agriculture, and development, are often negatively correlated with the ecological health of an area (Trombulak and Frissell, 2000). Road networks modify the hydrologic and sediment transport regimes of watersheds by accelerating erosion and sediment loading, altering channel morphology and accelerating runoff (Furniss *et al.*, 1991), all of which can affect sites for spawning and rearing. The construction of roads near streams can prevent natural channel adjustments, and urban roads may increase runoff of pollutants (Spence *et al.*, 1996).

The use of culverts and bridges can impair habitat connectivity, limiting accessibility of habitat to juvenile and adult salmon, as well as other fish and aquatic organisms (Furniss *et al.*, 1991). Culverts, if not properly installed or maintained, can fragment a watershed and make reaches inaccessible to migratory fish while simultaneously preventing upstream movement of resident fish and invertebrates. Conditions induced by culverts that block fish passage include high water velocities through the culvert over extended distances without adequate resting areas; water depth within the culvert that is too shallow for fish to swim; and culverts that are perched or hanging and exclude fish from entering the culvert (Furniss *et al.*, 1991). Bridges, while preferred to culverts (Furniss *et al.*, 1991), may also induce negative ecological impacts. Poorly designed bridges, like culverts, can alter sediment transport, natural alluvial adjustments, and downstream transport of organic material, particularly large woody debris. This alteration can affect sites for spawning, rearing and migration.

Other in-stream activities, such as alternative energy projects, may also affect the PCEs. Because the two projects analyzed by NMFS (only one of which has received a preliminary permit from FERC) are in the early planning stages, NMFS has yet to make specific recommendations regarding the protection of Atlantic salmon habitat. Until specific plans for the projects are made available, the potential impact on the critical habitat for Atlantic salmon will remain uncertain, as will any modifications that might be requested to mitigate adverse impacts. We seek comment on the potential impact of critical habitat on these activities, and also whether additional alternative energy projects should be considered in our analysis.

We conclude that the migration PCE and the spawning and rearing PCE in each specific area are and will likely continue to be negatively affected by roads and road crossings into the future, and, therefore, may require special management considerations or protection that may include applying best management practices that reduce sedimentation and pollution, and allow

for unobstructed passage of juvenile and adult Atlantic salmon at road crossings.

(f). Mining

Sand, gravel, cement, and some varieties of stone (e.g., slate and granite) and clay are mined extensively throughout Maine and this activity can negatively affect PCE sites, predominately those for spawning and rearing. Mining is known to occur within 36 specific areas proposed for designation. Mining of these materials in Maine occurs to the extent that Maine is largely self-sufficient with respect to these commodities (Lepage *et al.*, 1991). Sand and gravel mining can occur in the form of gravel pits and in some cases can involve dredging of streambeds. Sand and gravel mining in or adjacent to streams can affect sites for spawning and rearing by increasing fine and coarse particle deposition and elevating turbidity from suspended sediments (Waters, 1995).

We conclude that the spawning and rearing PCE is and will likely continue to be affected by sand and gravel mining into the future, and, therefore, may require special management or protections through increased riparian buffers that protect streams from sedimentation. Direct mining of gravel from streambeds does not currently occur in any of the specific areas, though such mining has been proposed in the past and may be proposed in the future. Therefore, spawning and rearing sites affected by streambed mining may require special management or protections, which may include relocation of streambed mining operations.

Maine's crystalline rocks are potential hosts to an array of metals including copper, zinc, lead, nickel, molybdenum, tin, tungsten, cobalt, beryllium, uranium, manganese, iron, gold and silver (Lepage *et al.*, 1991) and mining of these metals can negatively affect sites for spawning and rearing and sites for migration. Many metals occur naturally in rivers and streams and in trace concentrations are considered essential for proper physiological development of fish (Nelson *et al.*, 1991). The process of mining for metals can introduce toxic metals into streams as acid stimulation mobilizes metal ions from metalliferous minerals (Nelson *et al.*, 1991) and therefore may alter water chemistry in sites for spawning, rearing and migration. The most frequent metals that are released into streams and may be toxic to salmon depending on their concentration include arsenic, cadmium, chromium, cobalt, copper, iron, lead, manganese, mercury, nickel, and zinc (Nelson *et al.*, 1991). Dissolved copper is known to affect a variety of biological endpoints in fish (e.g., survival, growth, behavior, osmoregulation, sensory system, and others (reviewed in Eisler, 1998)). Laboratory exposure of 2.4 micrograms/L dissolved copper in water with hardness 20 mg/L resulted in avoidance behavior by juvenile Atlantic salmon and 20 micrograms/L dissolved copper in water with a hardness of 20 mg/L resulted in interrupted spawning migrations in the wild (Sprague *et al.*, 1965). A combined effect of copper-zinc may result in a complete block of migration at 0.8 toxic units (Sprague *et al.*, 1965). Currently metal mining does not occur within any of the specific areas, though recent mining exploration within the state suggests that metal mining may occur in the future. We conclude that spawning, rearing and migration PCEs in each specific area may, in the future, be negatively affected by metals mining and, therefore, may require special management considerations or protections, possibly through implementation of best management practices (BMPs) that protect rivers and streams from pollutants.

There are only two active, though limited, peat mining operations in Maine, both of which are located in Washington County (USGS, 2006) in the Narraguagus River HUC 10 (HUC code 105000209). Although there is currently no direct evidence that peat mining in other countries (i.e., Ireland, Norway) has affected Atlantic salmon, studies have shown that peat mining can affect water quality, wetlands, aquatic resources and sediment load (MASTF, 1997). One potential effect of peat mining on Atlantic salmon habitat is from runoff that may have historically exacerbated depressed pH in DPS rivers (NMFS and FWS, 1999). Low pH levels are known to impair smolt migrations as they transfer from the freshwater environment to the marine environment (Staurnes *et al.*, 1995; Brodeur *et al.*, 2001). We conclude that peat mining may negatively affect PCE sites in the Narraguagus River HUC 10, particularly for migration, as depressed pH levels are known to adversely affect migration smolts, and, therefore, may require special management considerations or protections through measures that protect rivers and streams from acid discharge of waste water or runoff.

(g). Dams

Dams occur in 40 specific areas proposed for critical habitat designation and negatively affect sites for spawning and rearing and sites for migration PCEs. Dams obstruct migration of Atlantic salmon which can delay or preclude adult salmon access to spawning sites and smolts from access to the marine environment. Dams also preclude or diminish access of co-evolved diadromous fish communities that likely serve as buffers from predators of migrating salmon (Saunders *et al.*, 2006). They can also degrade spawning and rearing sites through alterations of natural hydrologic, geomorphic and thermal regimes (American Rivers *et al.*, 1999; Heinz Center, 2002; NRC, 2004; Fay *et al.*, 2006). Dams are also the most significant contributing factor to the loss of salmon habitat connectivity within the range of the DPS (Fay *et al.*, 2006) and have been identified as the greatest impediment to self-sustaining Atlantic salmon populations in Maine (NRC, 2004).

As discussed in the economic analysis prepared in support of this designation, we recognize that impacts to hydropower operations may occur as a result of this designation. We solicit information on these impacts to inform our final designation.

We conclude that the migration, spawning and rearing PCEs are and will likely continue to be negatively affected by dams into the future, and, therefore, may require special management considerations or protection through dam removal or improved fish passage devices.

(h). Dredging

Dredging frequently occurs within bays and estuaries along the coast of Maine and can negatively affect the migration PCEs. Dredging may occur within 25 specific areas proposed for designation in the GOM DPS and is often a temporary activity depending on the size and duration of the dredging project. Dredging is the practice of removing sediment from an aquatic system and commonly occurs in freshwater, estuarine, and marine environments. Nightingale and Simenstad (2001a) place dredging practices into one of two categories: the creation of new projects and waterway deepening, or maintenance dredging for the purpose of preserving already existing channels. Nightingale and Simenstad (2001a) list some examples of why dredging might be used and include activities such as maintaining water depths, creating or expanding marinas, mining gravel or sand for shoreline armoring, opening channels for passage of flood flows, retrieving cement mixture ingredients, and removing contaminated sediments.

Dredging can cause a range of negative impacts to water quality in the

affected area, particularly in sites for migration where dredging is most likely to occur. Of greatest concern is the associated temporary increase in the water's turbidity (the measure of suspended solids in the water column). Increased turbidity can have adverse effects upon the impacted area's fish community that include a range of impacts from difficulty absorbing oxygen from the water, altered feeding behavior, and changes in predator-prey relationships (Nightingale and Simenstad, 2001a). In addition, increased turbidity causes reductions in the light's ability to penetrate the water column. Light penetration plays a central role in the level of productivity of aquatic environments, predator-prey relationships, schooling behavior, and fish migration (Nightingale and Simenstad, 2001a).

Juvenile salmonids migrating through and residing in estuaries are naturally capable of coping with high levels of turbidity; however, suspended solids introduced via dredging can produce material that is of the right size and shape to adversely affect the young salmon by inhibiting their ability to diffuse oxygen through their gills (Nightingale and Simenstad, 2001a). According to Nightingale and Simenstad (2001b), suspended solids in concentrations of ≥4,000 mg/L have been shown to cause erosion to the terminal ends of fish gills. In addition to impacting juvenile salmon, suspended solids at levels of 20 mg/L and 10 mg/L have been shown to result in avoidance behaviors from rainbow smelt, and Atlantic herring, respectively (Wildish and Power, 1985). We conclude that the migration PCE is and will likely continue to be negatively affected by dredging into the future, and, therefore, may require special management considerations or protections which may include time of year restrictions and employment of sediment control measures.

(i). Aquaculture

Aquaculture occurs in four specific areas proposed for designation within the range of the GOM DPS and can negatively affect PCE sites for spawning and rearing, and migration. The influence of aquaculture on Atlantic salmon is most frequently related to the interactions between wild fish and fish that have escaped from aquaculture facilities. Most escapes of farm salmon occur in the marine environment and involve smolts, post-smolts and adults. Escaped farmed salmon generally migrate up the nearest rivers. Large escapes of aquaculture fish have occurred in Maine and Canada and escaped farm salmon are known to return to Maine rivers. Escapes have been caused by storms, cage failure, anchor failure, human error, vandalism, and predator attacks (e.g., seals; NMFS/FWS, 2005). Although there is little direct information about the effects of net-pen salmon aquaculture on wild Maine salmon (NRC, 2004), potentially harmful interactions between wild and farmed salmon can be divided into ecological and genetic interactions. Ecological interactions can occur in sites for migration, resulting in alterations in disease transmission and changes to competition and predation pressures, whereas genetic interactions occur in spawning sites, which can modify the timing of important life history events and thereby alter selection pressures and fitness. These interactions are not mutually exclusive, and the effects of each may compound and influence the effects of the other. We conclude that the spawning and rearing PCE and the migration PCE in each affected HUC 10 is, and will likely continue to be, negatively affected by aquaculture into the future, and, therefore, may require special management considerations or protections which may include better containment of aquaculture fish to prevent escapement and enhanced disease and parasite control procedures.

TABLE 1—SPECIFIC AREAS WITHIN THE GEOGRAPHIC AREA OCCUPIED BY A SPECIES AND THE ASSOCIATED SPECIAL MANAGEMENT CONSIDERATIONS OR PROTECTIONS THAT MAY BE REQUIRED

HUC code	Watershed name	Special management considerations*								
105000205	Machias River	A	F	C/L	H/S	R		Da	Dr	
105000204	East Machias River	A	F	C/L	H/S	R	M	Da	Dr	
105000208	Pleasant River	A	F	C/L	H/S	R	M	Da	Dr	
105000201	Dennys River	A	F	C/L	H/S	R	M	Da	Dr	
105000207	Chandler River	A	F	C/L	H/S	R	M	Da	Dr	
105000209	Narraguagus River	A	F	C/L	H/S	R	M	Da	Dr	
105000213	Union River Bay	A	F	C/L	H/S	R	M	Da	Dr	Q
105000203	Grand Manan Channel	A	F	C/L	H/S	R	M	Da	Dr	Q
105000206	Roque Bluffs Coastal	A	F	C/L	H/S	R	M	Da	Dr	
105000210	Tunk Stream	A	F	C/L	H/S	R		Da	Dr	
105000212	Graham Lake	A	F	C/L	H/S	R	M	Da		
102000202	Grand Lake Matagamon	A	F	C/L	H/S	R		Da		
102000203	East Branch Penobscot River	A	F	C/L	H/S	R				
102000204	Seboeis River	A	F	C/L	H/S	R		Da		
102000205	East Branch Penobscot River	A	F	C/L	H/S	R		Da		
102000301	West Branch Mattawamkeag River	A	F	C/L	H/S	R	M	Da		
102000302	East Branch Mattawamkeag River	A	F	C/L	H/S	R	M			
102000303	Mattawamkeag River	A	F	C/L	H/S	R	M			
102000305	Mattawamkeag River	A	F	C/L	H/S	R	M			
102000306	Molunkus Stream	A	F	C/L	H/S	R				
102000307	Mattawamkeag River	A	F	C/L	H/S	R	M	Da		
102000401	Piscataquis River	A	F	C/L	H/S	R		Da		
102000402	Piscataquis River	A	F	C/L	H/S	R	M	Da		
102000404	Pleasant River	A	F	C/L	H/S	R		Da		
102000405	Seboeis Stream	A	F	C/L	H/S	R		Da		
102000406	Piscataquis River	A	F	C/L	H/S	R	M	Da		
102000501	Penobscot River at Mattawamkeag	A	F	C/L	H/S		M	Da		
102000502	Penobscot River at West Enfield	A	F	C/L	H/S	R	M	Da		
102000503	Passadumkeag River	A	F	C/L	H/S	R	M	Da		
102000505	Sunkhaze Stream	A	F	C/L	H/S	R				
102000506	Penobscot River at Orson Island	A	F	C/L	H/S	R	M			

TABLE 1—SPECIFIC AREAS WITHIN THE GEOGRAPHIC AREA OCCUPIED BY A SPECIES AND THE ASSOCIATED SPECIAL MANAGEMENT CONSIDERATIONS OR PROTECTIONS THAT MAY BE REQUIRED—Continued

HUC Code	Watershed Name	Special Management Considerations*								
102000507	Birch Stream	A	F	C/L	H/S	R	M			
102000509	Penobscot River at Veazie Dam	A	F	C/L	H/S	R	M	Da		
102000510	Kenduskeag Stream	A	F	C/L	H/S	R	M	Da	Dr	
102000511	Souadabscook Stream	A	F	C/L	H/S	R	M	Da	Dr	
102000512	Marsh River	A	F	C/L	H/S		M	Da	Dr	
102000513	Penobscot River	A	F	C/L	H/S	R	M	Da	Dr	
105000218	Belfast Bay	A	F	C/L	H/S	R	M	Da	Dr	
105000219	Ducktrap River	A	F	C/L	H/S	R		Da	Dr	Q
105000301	St. George River	A	F	C/L	H/S	R	M	Da	Dr	
105000302	Medomak River	A	F	C/L	H/S	R	M	Da	Dr	
105000305	Sheepscot River	A	F	C/L	H/S	R	M	Da	Dr	
103000306	Kennebec River at Waterville Dam	A	F	C/L	H/S	R	M	Da	Dr	
103000305	Sandy River	A	F	C/L	H/S	R	M	Da	Dr	
103000312	Kennebec at Merrymeeting Bay	A	F	C/L	H/S	R	M	Da	Dr	Q
105000306	Sheepscot Bay	A	F	C/L	H/S	R	M	Da	Dr	
105000307	Kennebec River Estuary	A	F	C/L	H/S	R	M	Da	Dr	
104000210	Little Androscoggin River	A	F	C/L	H/S	R	M	Da	Dr	

* A = Agriculture; F = Forestry, C/L = Changing Land Use; H/S = Hatcheries and Stocking; R = Roads and Road Crossings; M = Mining; Da = Dams; Dr = Dredging; Q = Aquaculture.

*''Specific Areas Outside the Geographical Area Occupied by the Species * * * Essential to the Conservation of the Species''*

The ESA 3(5)(A)(ii) further defines ''critical habitat'' as ''specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of [section 4 of this Act], upon a determination by the Secretary that such areas are essential for the conservation of the species''. For the reasons stated above in the discussion of specific occupied areas, we delineated the specific areas outside the geographic area occupied by the species using HUC 10 (level 5) watersheds. To determine whether these unoccupied areas are essential for the conservation of the species, we: (1) Established recovery criteria to determine when the species no longer warrants the protections of the ESA (See Appendix A of Biological valuation of Atlantic salmon habitat within the range of the GOM DPS) and the amount of habitat needed to support the recovered population; and (2) determined the amount of habitat currently occupied by the species relative to the amount of habitat necessary to achieve recovery.

To establish recovery criteria, we determined the characteristics of a recovered GOM DPS. We first established a geographic framework represented by three Salmon Habitat Recovery Units, or SHRUs, within the DPS (see appendix A of the Biological valuation of Atlantic Salmon Habitat within the range of the GOM DPS, 2008). The SHRU delineations were established to aid in developing criteria for recovery to ensure that Atlantic salmon are widely distributed across the DPS such that recovery of the species is not limited to one river or one geographic location within the GOM DPS. As explained in more detail in the Biological valuation of Atlantic salmon habitat within the range of the GOM DPS, Appendix A, we determined that all three SHRUs must fulfill the criteria described below for the overall species, the GOM DPS, to be considered recovered. The three SHRUs will provide protection from genetic and demographic stochasticity as well as depensatory effects whereby a decrease in the population can lead to reduced survival and production of eggs and offspring. Recovery of the GOM DPS, whereby each of the three SHRUs meet the criteria described below, also assures diversity across the geographic range such that fish from one SHRU may be particularly well adapted to one environment or set of conditions (e.g., long migration corridors, high gradient reaches, warm temperatures, etc.) to which fish from another SHRU may not be well adapted.

Criteria

As explained further in the Biological valuation of Atlantic Salmon Habitat within the range of the GOM DPS, Appendix A, we determined that if the census population (N) of adult spawners within any of the three SHRUs were to fall below 500, the GOM DPS should be evaluated as threatened pursuant to the factors set forth in the ESA. A census population of 500 adult spawners within all three SHRUs also serves as the starting point in which to make a determination of recovery for the entire GOM DPS. Franklin (1980) introduced 500 as the approximate effective population size necessary to retain sufficient genetic variation and long term persistence of a population. Though there has been much debate in the literature regarding the application of assigning a general number to represent when populations are sufficiently large enough to maintain genetic variation (Allendorf and Luikart, 2007), the ''500 rule'' introduced by Franklin (1980) has not been superseded by any other rule and does serve as useful guidance for indicating when a population may be at risk of losing genetic variability (Allendorf and Luikart, 2007).

We have chosen to use 500 adult spawners (1 or 2 sea-winter salmon) in each SHRU as the indicator of when the populations in each of the three SHRUs may be at risk of losing genetic variability. We used the census number rather than an effective population size (Ne) primarily because determining an effective population size for natural populations with highly complex life histories can be extremely difficult and highly variable from one year to the next (Waples and Yokota, 2007; Reiman and Allendorf, 2001). In Atlantic salmon populations, where cross-generational breeding, iteroparity, and precocious parr all contribute to the breeding population, computing an effective population size of the natural population would most likely generate values with substantial error surrounding the data, and therefore not be particularly useful in determining when the population is at risk of becoming endangered.

Additionally, an N of 500 per SHRU provides only a starting point from which to establish criteria for delisting and will not necessarily be the actual number at which the DPS warrants delisting. Geographic distribution, population trends, and the results of Population Viability Analyses (PVAs) are other factors that will be used in determining extinction risks to the GOM DPS (see appendix A of Biological valuation of Atlantic salmon habitat within the GOM DPS (2008)) and the determination of when the GOM DPS warrants delisting. Furthermore, objective, measurable criteria as required under ESA § 4(f)(1)(B)(ii) will further establish thresholds for recovery and will be determined in a final recovery plan for the expanded GOM DPS. As a result, the actual number of fish needed to warrant a delisting decision will likely be greater than 500 for each SHRU based upon the demographics of the population leading up to the point at which a decision is made.

Given a population size of 500 adult spawners in any SHRU as a threshold in which the GOM DPS should be evaluated for listing as a threatened species, we determined that a recovered GOM DPS would be one that is not likely to become threatened, because a recovered GOM DPS should not be a population that teeters on the line between a GOM DPS that is recovered, and a GOM DPS that is threatened.

Therefore, for the GOM DPS to be considered recovered, each SHRU must have a less than 50-percent chance of the adult spawner population falling below 500 over the next 15 years (see Appendix A of Biological valuation of Atlantic salmon habitat within the GOM DPS). Additionally, the entire GOM DPS must reflect sustainable positive population growth for a period of 10 years (or two generations) to ensure that population trends are substantive (see Appendix A of Biological valuation of Atlantic Salmon Habitat within the GOM DPS, 2008). The criteria described above were then applied to aid in determining whether designating any specific unoccupied habitat areas are essential for the conservation of the species by estimating the amount of habitat needed to support a recovered GOM DPS.

Using demographic data for the period between 1991–2006, a period considered to have had exceptionally low survival, we applied the criteria described above in conjunction with a Population Viability Analysis (PVA) to determine how many adults would be required in each SHRU to weather a similar downturn in survival while having a greater than 50-percent chance of remaining above 500 adults (see Appendix B of Biological valuation of Atlantic salmon habitat within the GOM DPS, 2008). This analysis projected that a census population of 2,000 spawners (1000 male and 1000 female) would be needed in each of the three SHRUs for the GOM DPS to weather a downturn in survival such as experienced over the time period from 1991–2006. Based on this analysis, enough habitat is needed in each of the three SHRUs to support the offspring of 2,000 spawners. Using an average fecundity per female of 7,200 eggs (Legault, 2004), and male to female ratio of 1:1, or 1000 females, and a target number of eggs per one unit of habitat (100 m^2) of 240 (Baum, 1997) we determined that 30,000 units of habitat is needed across each SHRU (7,200 eggs × 1000 females/240 eggs = 30,000) to support the offspring of 2,000 spawners, which represents the quantity of habitat in each SHRU essential to the conservation of the species (Appendix B of Biological valuation of Atlantic Salmon Habitat within the GOM DPS, 2008).

To calculate the existing quantity of habitat across the DPS both within the currently occupied range and outside the occupied range, we considered the measured quantity of habitat within each HUC 10 as well as the habitat's quality to generate the habitat's functional equivalent. The functional equivalent values are a measure of the quantity of habitat (expressed in units where 1 unit of habitat is equivalent to 100 m^2 of habitat) within a HUC 10 based on qualitative factors that limit survivorship of juvenile salmon utilizing the habitat for spawning, rearing and migration. The functional equivalent also accounts for dams within or below the HUC 10 that would further reduce survivorship of juvenile salmon within the HUC 10 as they migrate towards the marine environment. In HUC 10s that are not believed to be limited by qualitative factors or dams, the functional equivalent would be identical to the measured quantity of habitat within the HUC 10. In HUCs where quality and dams are believed to be limiting, the functional equivalent would be less than the measured habitat within the HUC 10. The functional equivalent value is used in the critical habitat evaluation process to determine the quantity of functioning habitat within each HUC 10. It also determines the quantity of functioning habitat within the currently occupied range relative to the amount needed to support the offspring of 2000 adult spawners.

The functional equivalent was generated by multiplying the units of habitat within each HUC 10 by the habitat quality score divided by 3 (e.g. 1 = 0.33, 2 = 0.66, and 3 = 1; discussed below under application of ESA section 4(b)(2)). This value was then multiplied by the passage efficiency of FERC dams with turbines raised to the power of the number of dams both within and downstream of the HUC 10. Habitat quality scores were divided by 3 to represent their relative values in terms of percentages such that a ''1'' habitat quality score has a qualitative value roughly 33 percent of habitat that is not limiting, ''2'' habitat quality score is roughly 66 percent, and a ''3'' score equals 100-percent habitat quality. We consider 0.85 to represent a coarse estimate of passage efficiency for FERC dams with turbines based on the findings of several studies (GNP, 1995; GNP, 1997; Holbrook, 2007; Shepard, 1991c; Spicer et al. 1995) and therefore roughly equivalent to a 15 percent reduction in functional equivalent. The number of dams present both within and downstream of the HUC 10 was used as an exponent to account for cumulative effects of dams. A full review of how habitat quantities and habitat qualities were computed is provided in the Biological Valuation of Atlantic Salmon Habitat within the GOM DPS, 2008.

Table 2 represents the total amount of measured habitat within the occupied areas of each SHRU; the habitats functional equivalent for each SHRU; amount of habitat proposed for exclusion; the amount of functional habitat (represented as functional equivalent) after exclusion; and the amount of habitat still needed to support the offspring of 2,000 adult spawners within each SHRU.

TABLE 2—TOTAL HABITAT AND FUNCTIONAL HABITAT FOR OCCUPIED AREAS

Among the Three SHRUs in the GOM DPS

SHRU	Total habitat units	Functional equivalent	Proposed exclusion	Functional habitat after exclusions	Additional habitat needed to support the offspring of 2,000 adult spawners (i.e., 30,000 units)
Merrymeeting Bay	372,639	40,001	0	40,001	0
Penobscot Bay	323,740	66,263	3,205	63,058	0
Downeast Coastal	61,395	29,111	0	29,111	889

In both the Penobscot and Merrymeeting Bay SHRUs there are more than 30,000 units of functional habitat within the currently occupied area to support the offspring of adult spawners. In the Downeast SHRU, the amount of functional habitat available to the species is estimated to be 889 units short of what is needed to support 2000 adult spawners. Nonetheless, we determined that no areas outside the occupied geographical area within the Downeast SHRU are essential to the conservation of the species. This is because of the 61,395 total habitat units in Downeast Maine, the habitat is predicted to be functioning at the equivalent of only 29,111 units because of the presence of dams or because of degraded habitat features that reduce the habitats functional value. Through restoration efforts, including enhanced fish passage and habitat improvement of anthropogenically degraded features, a substantial portion of the approximate 32,000 units of non-functioning habitat may be restored to a functioning state. The Union River, for instance, has over 12,000 units of habitat, though its functional potential is estimated to be equivalent to approximately 4,000 units of habitat. This is largely because of dams without fish passage that preclude Atlantic salmon access to portions of the Union River watershed. Dam removal or improved fish passage has the potential to restore a significant amount of the 8,000 units within the Union River declared to be non-functioning habitat.

Throughout Maine, there has been substantial effort on behalf of state and Federal agencies and non-profit organizations in partnership with landowners and dam owners to restore habitat through a combination of land and riparian protection efforts, and fish passage enhancement projects. Project SHARE, the Downeast Salmon Federation, watershed councils, Trout Unlimited, and the Atlantic Salmon Federation, for example, have conducted a number of projects designed to protect, restore and enhance habitat for Atlantic salmon ranging from the Kennebec River in south central Maine to the Dennys River in Eastern Maine. Projects include (though are not limited to) dam removals along the Kennebec, St. George, Penobscot, and East Machias Rivers, land protection of riparian corridors along the Machias, Narraguagus, Dennys, Pleasant, East Machias, Sheescot, Ducktrap rivers and Cove Brook; surveying and repair of culverts that impair fish passage; and outreach and education efforts on the benefits of such projects. The Penobscot River Restoration Project is another example of cooperative efforts on behalf of Federal and state agencies, non-profit organizations and dam owners. The PRRP goal is to enhance runs of diadromous fish through the planned removal of two mainstem dams and enhanced fish passage around several other dams along the Penobscot River. These cooperative efforts can increase the functional potential of Atlantic salmon habitat by both increasing habitat availability as well as increasing habitat quality. Therefore, we do not believe that it is essential to designate critical habitat outside of the currently occupied range.

Activities That May Be Affected (Section 4(b)(8))

Section 4(b)(8) of the ESA requires that we describe briefly and evaluate in any proposed or final regulation to designate critical habitat, those activities that may destroy or adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect critical habitat and, when carried out, funded, or authorized by a Federal agency, will require an ESA section 7 consultation. Such activities (detailed in the economic analysis) include, but are not limited to agriculture, transportation, development and hydropower.

We believe this proposed critical habitat designation will provide Federal agencies, private entities, and the public with clear notification of critical habitat for Atlantic salmon and the boundaries of such habitat. This designation will allow Federal agencies and others to evaluate the potential effects of their activities on critical habitat to determine if ESA section 7 consultation with NMFS is needed given the specific definition of physical and biological features.

Application of ESA Section 4(a)(3)(B)(1)

The Sikes Act Improvement Act of 1997 (16 U.S.C. 670a–670f, as amended), enacted on November 18, 1997, required that military installations with significant natural resources prepare and implement an integrated natural resource management plan (INRMP) in cooperation with the USFWS and state fish and wildlife agencies, by November 18, 2001. The purpose of the INRMP is to provide the basis for carrying out programs and implementing management strategies to conserve and protect biological resources on military lands. Because military lands are often protected from public access, they can include some of the nation's most significant tracts of natural resources. INRMPs are to provide for the management of natural resources, including fish, wildlife, and plants; allow multipurpose uses of resources; and provide public access where appropriate for those uses, without any net loss in the capability of an installation to support its military mission.

In 2003, the National Defense Authorization Act (Pub. L. 108–136) amended the ESA to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the ESA (16 U.S.C. 1533(a)(B)(i)) states: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 67a), if the Secretary determines in writing that such plan provides a benefit

to the species for which critical habitat is proposed for designation.''

Within the specific areas identified as critical habitat for the Gulf of Maine DPS, there are three military sites, one of which has been decommissioned and recently transitioned to civilian ownership. The two active military sites within the occupied range of the DPS include: (1) The 3,094 acre Brunswick Naval Air Station in Brunswick, Maine, of which 435 acres are within Little Androscoggin HUC 10 watershed in the Merrymeeting Bay SHRU; and (2) the Brunswick Naval Air Stations cold weather survival, evasion, resistance and escape school which occupies 12,000 acres near Rangeley, Maine and occupies 5,328 acres of the Sandy River HUC 10 watershed in the Merrymeeting Bay SHRU. We have contacted the Department of Defense and requested information on the existence of INRMPs and the benefits any INRMPs would provide to Atlantic salmon. If any INRMPs covering these sites are determined, in writing, to provide a benefit to Atlantic salmon, we would be precluded from designating the Atlantic salmon habitat within these sites, which is comprised of 9.56 km of river and streams containing physical and biological features in the Sandy River HUC, and 0.81 km of river and streams containing physical and biological features in the Lower Androscoggin HUC.

Application of ESA Section 4(b)(2)

The foregoing discussion described the specific areas within U.S. jurisdiction that meet the ESA definition of critical habitat because they contain the physical and biological features essential to the conservation of Atlantic salmon that may require special management considerations or protection. Before including areas in a designation, section 4(b)(2) of the ESA requires the Secretary to consider the economic impact, impact on national security, and any other relevant impacts of designation of any particular area. The Secretary has the discretion to exclude any area from designation if he determines that the benefits of exclusion (that is, avoiding some or all of the impacts that would result from designation) outweigh the benefits of designation based upon the best scientific and commercial data available. The Secretary may not exclude an area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any particular area under any circumstances.

The 4(b)(2) exclusion process is conducted for a ''particular area,'' not for the critical habitat as a whole. This analysis is therefore conducted at a geographic scale that divides the area under consideration into smaller sub-areas. The statute does not specify the exact geographic scale of these ''particular areas.'' For the purposes of the analysis of economic impacts, a ''particular area'' is equivalent to a ''specific area'', defined as a HUC 10 (level 5) standard watershed. There are 48 ''specific areas'' (HUC 10s) occupied by the species on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations or protection.

Where we considered impacts on Indian Tribes, we delineated particular areas based on land ownership. Where we consider impacts on national security particular areas will be delineated based on lands identified by the military as areas where critical habitat will have an impact on national security. These areas may only account for a small fraction of a HUC 10 watershed or, in some circumstances, may span across several HUC 10 watersheds. Factors that were considered in determining whether or not the benefits of exclusion outweighed the benefits of designating the particular areas as critical habitat:

(1) The quantity of functional habitat proposed for exclusion relative to the quantity of habitat needed to support a recovered population;

(2) The relative biological value of a particular area to the conservation of the species, measured by the quantity and quality of the physical and biological features with the particular area;

(3) The anticipated conservation loss that would be accrued through not designating a particular area based upon the conservation value of that particular area; and

(4) Whether exclusion of habitat within the particular area, based upon the best scientific and commercial data, would result in the extinction of the species concerned.

Assigning Biological Value

To determine the benefits of including an area as critical habitat, we assigned a Final Biological Value to each HUC 10 watershed based on the quantity and quality of Atlantic salmon spawning and rearing habitat and the migratory needs of the species (see Biological valuation of Atlantic salmon habitat in the GOM DPS (2008)). The Final Biological Value indicates each areas current value to Atlantic salmon spawning, rearing and migration activities and is applied in the 4(b)(2) exclusion analysis, where it is weighed against the economic, national security, and other relevant impacts to consider whether specific areas may be excluded from designation. (The final biological value also aided in determining those areas currently occupied by the species described earlier in the proposed rule under ''Identifying the Geographical Area Occupied by the Species and Specific Areas within the Geographical Area'').

The variables used to develop the Final Biological Value include a combination of habitat units, habitat quantity, habitat quality, and the value of the HUC 10 to migration of smolts and adults.

A habitat unit represents 100 m^2 of spawning and rearing habitat. A ''habitat unit'' is used in North America and Europe to quantify habitat features most frequently used for spawning and juvenile rearing (e.g., riffles and runs). Habitat units for each HUC 10 were calculated using the GIS based habitat prediction model described earlier in the proposed rule under *Physical and Biological Features in Freshwater and Estuary Specific Areas Essential to the Conservation of the Species.*

Habitat quantity is the estimate of habitat units generated by the model and was calculated separately for each HUC 10. The units of habitat were then binned into four categories for each of the three SHRUs. A HUC 10 with no habitat was assigned a score of ''0'' and was considered unoccupied. HUC10's with the lowest 25 percent of total units of habitat across the entire SHRU received a ''1'' score, the middle 50 percent received a ''2'' score, and the upper 25 percent received a ''3'' score. A ''3'' score represents the highest relative habitat quantity score. This method resulted in the majority of the habitat receiving a score of ''2'' representing an average habitat quantity. Habitat scores outside the middle 50 percent were considered to have above average habitat quantity or below average habitat quantity.

Habitat quality scores were assigned to HUC 10s based on information and input from fisheries biologists working with the Maine Department of Inland Fisheries and Wildlife, the MDMR, NMFS, and Kleinschmidt Energy and Water Resource Consultants who possess specific knowledge and expertise about the geographic region. For each of the three SHRUs, a minimum of three biologist with knowledge of and expertise in the geographic area were asked to independently assign habitat scores,

using a set of scoring criteria developed by Fisheries Biologists from NMFS, to HUC 10s based on the presence and quality of the physical and biological features essential to the conservation of the species (see Biological valuation of Atlantic salmon habitat within the GOM DPS (2008)). The scoring criteria ranked qualitative features including temperature, biological communities, water quality, and substrate and cover, as being highly suitable (''3''), suitable (''2''), marginally suitable (''1'') or not suitable (''0'') for supporting Atlantic salmon spawning, rearing and migration activities. A habitat value of ''0'' indicates that one or more factors is limiting to the point that Atlantic salmon could not reasonably be expected to survive in those areas; a score of ''1'', ''2'' or ''3'' indicates the extent to which physical and biological features are limiting, with a ''1'' being most limiting and a ''3'' being not limiting. In HUC 10s that are and have always been inaccessible due to natural barriers, the entire HUC 10 was automatically scored as ''0'' and considered not occupied by the species. During the scoring process, biologists were given the option to consider all the HUC 12 sub-watersheds present within each HUC 10 watershed to aid in reaching a final HUC 10 watershed score. Emphasis was placed on identifying whether or not the physical and biological features needed for Atlantic salmon spawning and rearing are present and of what quality the features are. The overall habitat quality score for each HUC 10 was typically an average determined by the compilation of scores and comments provided from the biologists.

Final Habitat Values were generated for each HUC 10 by combining habitat quantity and habitat quality scores within each HUC 10. HUC 10s with zero scores for either habitat quantity or quality received a zero score for Final Habitat Value. Combined scores were then binned on a scale of one to three with the lowest 25 percent receiving a ''1'' score, the middle 50 percent receiving a ''2'' score, and the upper 25 percent receiving a ''3'' score. A ''3'' score represents the highest relative Final Habitat Value.

A final migration score was generated based on the final habitat values and the migratory requirements of adults to reach spawning areas and smolts to reach the marine environment. We determined the final migration score of a HUC 10 to be equal to the highest final habitat value upstream from the HUC 10 as we concluded that access to spawning and rearing habitat was equally as important as the spawning and rearing habitat itself.

The final biological value for each HUC 10, which is the value used in weighing economic cost against the biological value of habitat to salmon, was determined by selecting the higher of the final habitat score and the final migration score of each HUC10. This approach assures the preservation of spawning and rearing habitat as well as migration habitat (see Biological valuation of Atlantic salmon habitat within the range of the GOM DPS, 2008).

Consideration of Economic Impacts, Impacts to National Security and Any Other Relevant Impacts

The impact of specifying any particular area as critical habitat occurs primarily through section 7 of the ESA. Once critical habitat is designated, section 7(a)(2) requires that Federal agencies ensure any action they authorize, fund or carry out (this action is called the ''Federal nexus'') is not likely to result in the destruction or adverse modification of critical habitat (16 U.S.C. 1536(a)(2)). Parties involved in section 7 consultations include NMFS or the USFWS, a Federal action agency, and in some cases, a private entity involved in the project or land use activity. The Federal action agency serves as the liaison with NMFS. Under Section 7(a)(2), when a Federal agency proposes an action that may affect a listed species or its critical habitat, it must initiate formal consultation with NMFS (or the USFWS, as applicable) or seek written concurrence from the Services that the action is not likely to adversely affect listed species or its designated critical habitat. Formal consultation is a process between the Services and a Federal agency designed to determine whether a proposed Federal action is likely to jeopardize the continued existence of a species or destroy or adversely modify critical habitat, an action prohibited by the ESA. If the action is likely to destroy or adversely modify critical habitat, then the Federal agency may be required to implement a reasonable and prudent alternative (RPA) to the proposed action to avoid the destruction or adverse modification of critical habitat. In addition, conservation benefits to the listed species would result when the consultation process avoids destruction or adverse modification of its critical habitat through inclusion of RPAs, or avoids lesser adverse effects to critical habitat that may not rise to the level of adverse modification through inclusion of harm avoidance measures.

Outside of the Federal agencies' obligation to critical habitat and project modifications that may be required to avoid destruction or adverse modification, the ESA imposes no requirements or limitations on entities or individuals as result of a critical habitat designation.

Economic Impacts

As discussed above, economic impacts of the critical habitat designation result from implementation of section 7 of the ESA. Section 7(a)(2) requires Federal agencies to consult with NMFS to ensure their proposed actions are not likely to destroy or adversely modify critical habitat. These economic impacts may include both administrative and project modification costs. Economic impacts may also be associated with the conservation benefits of the designation.

Economic impacts were assessed for each specific HUC 10 area proposed for designation, as well as for unoccupied areas within the range of the GOM DPS. While we are not proposing to designate unoccupied areas, we evaluated the economic impacts in the event that we determined in the biological valuation process, or determine as a result of public comment or subsequently available information, that some or all of the unoccupied areas were found to be to be essential to the conservation of the species. For the entire range of the GOM DPS, the present value of estimated economic impacts ranges from approximately $222 million to $259 million, with most of the economic impact resulting from impacts to hydropower and development (IEc, 2008a). The estimated economic impact of designation of the occupied areas before economic exclusions ranges from approximately $165 million to $190 million. We solicit comment on the economic impacts to activities that may be affected as a result of this designation, particularly hydropower activities and alternative energy projects. Information received will be considered in the development of the final designation.

For the designation of critical habitat for the GOM DPS, economic exclusions within the 48 occupied HUC 10s throughout the DPS were considered by weighing biological value determined in the biological valuation and the economic cost determined in the economic analysis. As described earlier, the Biological Values were assigned a score of 1, 2, or 3, with a ''1'' being of lowest biological value and a ''3'' being of highest biological value. Areas could also be assigned a biological value of ''0'' if the physical and biological

features in those areas were so degraded that they were not considered essential to the conservation of salmon. Areas assigned a ''0'' score were not included in the economic exclusion analysis. As stated above, we consider these areas to be unoccupied, and we determined that no unoccupied areas were essential to the conservation of the GOM DPS.

To compare economic cost with biological value, we ranked the range often monetized categories provided in the economic analysis (IEc, 2008a) as being high (''3''), medium (''2'') or low (''1'') economic impact. These categories illustrate economic costs over the range of the GOM DPS. The high, medium and low scores assigned to economic costs were then used to weigh economic cost against the corresponding biological value (also scored as high, medium or low) of each HUC 10. When developing criteria for comparing economic costs the use of a dollar value was chosen. A score of ''1'' (low economic costs) represents a cost ranging from $24,000 to $432,000; a score of ''2'' represents a medium economic cost ranging form $432,001 to $2,810,000; and a score of ''3'' represents a high economic cost ranging from $2,810,001 to $26,300,000. These dollar thresholds do not represent an objective judgment that low-value areas are worth no more than $432,000, medium-value areas are worth no more than $2,810,000, or high value areas are worth no more than $26,300,000. Under the ESA, we are to weigh dissimilar impacts given limited time and information. The statute emphasizes that the decision to exclude is discretionary. Thus, the economic impact level at which the economic benefits of exclusion outweigh the conservation benefits of designation is a matter of discretion and depends on the policy context. For critical habitat, the ESA directs us to consider exclusions to avoid high economic impacts, but also requires that the areas designated as critical habitat are sufficient to support the conservation of the species and to avoid extinction. In this policy context, we selected dollar thresholds representing the levels at which we believe the economic impact associated with a specific area would outweigh the conservation benefits of designating that area.

Given the low abundance and endangered status of Atlantic salmon, we exercise our discretion to consider exclusion of specific areas based on three decision rules: (1) specific areas with a biological value of medium (''2'') or high (''3'') score were not eligible for exclusion regardless of the level of economic impact, because of the endangered status of Atlantic salmon; (2) specific areas with a low biological value (''1'') were excluded if the economic costs were greater than $432,000 (economic score of ''2'' or ''3''); (3) specific areas were not considered for exclusion, including those areas having a low biological value (''1''), if the area had no dams both within it or below it given that these areas are not subject to the deleterious effects that dams have on migration of adults and smolts (GNP 1995; GNP 1997; Holbrook 2007; Shepard 1991c; Spicer et al. 1995). These dollar thresholds and decision rules provided a relatively simple process to identify, in a limited amount of time, specific areas warranting consideration for exclusion.

We propose to exclude three particular areas (HUC 10s) in the Penobscot Bay SHRU due to economic impact, out of a total of 48 occupied HUC 10s within the range of the GOM DPS. Areas proposed for exclusion include 1,243 km of river, stream and estuary habitat and 97 sq. km of lakes in all of Belfast Bay (HUC 105000218), Passadumkeag River (HUC 102000503), and Molunkus Stream (HUC 102000306). The combined economic impact of the designation in those particular areas was estimated to be $8,391,000 to $9,412,000 before they were considered for exclusion. The estimated economic impact for the proposed critical habitat following exclusions ranges from approximately $97 million to $120 million. The estimated economic impact of the proposed critical habitat designation for each SHRU are in Table 3.

TABLE 3—SUMMARY OF ECONOMIC IMPACT FOR OCCUPIED HUC 10 BY SHRU IN THE GOM DPS

SHRU	Low estimate	High estimate
Downeast Coastal	$7,473,000	$10,488,000
Penobscot Bay	17,393,100	22,346,900
Merrymeeting Bay	72,520,000	87,310,000
Total	97,386,100	120,144,900

National Security

As stated above, within the areas identified as critical habitat for the GOM DPS, there are three military sites, one of which has been decommissioned and recently transitioned to civilian ownership. The two active military sites within the occupied range of the DPS include: (1) The 3,094 acre Brunswick Naval Air Station in Brunswick, Maine, of which 435 acres are within Little Androscoggin HUC 10 watershed in the Merrymeeting Bay SHRU; and (2) the Brunswick Naval Air Stations cold weather survival, evasion, resistance and escape school which occupies 12,000 acres near Rangeley, Maine and occupies 5,328 acres of the Sandy River HUC 10 watershed in the Merrymeeting Bay SHRU. We have contacted these installations concerning the national security impacts of designation of these areas as critical habitat. If these areas are eligible for designation (i.e., not covered by INRMPs that provide a benefit to the GOM DPS) and any identified national security impacts are determined to outweigh the benefits of designation, we would exclude from the designation the Atlantic salmon habitat within these military sites, which is comprised of 9.56 km of river and streams containing physical and biological features in the Sandy River HUC, and 0.81 km of river and streams containing physical and biological features in the Lower Androscoggin HUC.

Other Relevant Impacts: Tribal Lands

The Penobscot Indian Nation and the Passamaquoddy Tribe own and conduct activities on lands within the Gulf of Maine DPS. Activities may include agriculture; residential, commercial, or industrial development; in-stream construction projects; silviculture; water quality monitoring; hunting and fishing; and other uses. Some of these activities may be affected by the designation of critical habitat for the Gulf of Maine DPS of Atlantic salmon.

Secretarial Order 3206 recognizes that Tribes have governmental authority and the desire to protect and manage their resources in the manner that is most beneficial to them. Pursuant to the Secretarial Order, and consistent with

the Federal government's trust responsibilities, the Services must consult with the affected Indian Tribes when considering the designation of critical habitat in areas that may impact tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights. Critical habitat in such areas, unless determined to be essential to conserve a species, may not be designated.

The Indian lands specifically proposed for exclusion are those defined in Secretarial Order 3206 and include: (1) Lands held in trust by the United States for the benefit of any Indian tribe; (2) lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the tribal government; and, (4) fee lands within the reservation boundaries owned by individual Indians.

The Penobscot Indian Nation and the Passamaquoddy Tribe own and conduct activities on approximately 182,000 acres of land throughout the entire GOM DPS. Both tribes that own lands within the GOM DPS have actively pursued or participated in activities to further promote the health and continued existence of Atlantic salmon and their habitats. The Penobscot tribe has developed and maintained its own water quality standards that state ''it is the official policy of the Penobscot Nation that all waters of the Tribe shall be of sufficient quality to support the ancient and historical traditional and customary uses of such tribal waters by members of the Penobscot Nation.'' The Tribe is also currently participating in the Penobscot River Restoration Project that has the intended goal of restoring 11 species of diadromous fish, including Atlantic salmon. The Passamaquoddy Tribe has continued to maintain efforts to balance agricultural practices with natural resources. In a tract of Tribal land in Township 19, which accounts for approximately 12 km of the 27.8 km of rivers and streams on Passamaquoddy land that contain physical and biological features essential to salmon, the tribe has established an ordinance to govern its water withdrawals for these lands. This ordinance states ''it is important to the Tribe that its water withdrawals at T. 19 do not adversely affect the Atlantic salmon in any of its life stages, or its habitat,'' and restricts water withdrawals to avoid adverse impact on the Atlantic salmon.

Within the occupied range proposed for designation, the Tribes own approximately 84,058 acres of land within 16 HUC 10 watersheds. NMFS proposes that the rivers, streams, lakes and estuaries of all 84,058 acres of tribal land within the areas occupied by the GOM DPS also be excluded from critical habitat designation based on the principles of the Secretarial Order discussed above. Of the 84,058 acres, 26,401 acres overlap with particular areas being proposed for exclusion based on economic impacts.

Determine Whether Exclusion Will Result in Extinction of the Species

Section 4(b)2 states that particular areas shall not be excluded from critical habitat if the exclusion will result in extinction of the species. Our decision to only propose for exclusion particular areas based on economic impacts that had low biological value, unless dams were absent from the particular area, led to proposed exclusions only in the Penobscot SHRU. No economic exclusions were proposed in the Downeast or Merrymeeting Bay SHRUs. Given that exclusions based on economic impacts within the Penobscot SHRU were only made in areas considered to have little biological value to Atlantic salmon, those exclusions are not considered to jeopardize the species' continued existence because those areas do not diminish the functional equivalent below what is needed to support a recovered GOM DPS.

We do not believe that exclusions of tribal lands will reduce the conservation value or functional equivalent of Atlantic salmon habitat within those particular areas given the ongoing cooperative efforts between the Tribes and the agencies. The combined habitat within the two military installations that contain critical habitat includes a total of 10 km of river and stream habitat out of roughly 4,394 km of river and stream habitat within the Merrymeeting Bay SHRU. These areas do not further reduce the amount of functional habitat within the Merrymeeting Bay SHRU below the amount needed to support the offspring of 2,000 adult spawners, and exclusion of these areas would therefore not likely result in the extinction of the species. Further evaluation of the impacts of excluding these military sites based on national security will be completed upon receipt of information requested from the Department of Defense.

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governments and agencies, the scientific community, industry, or any other interested party concerning the proposed designation and exclusions, the biological valuation, the economic analysis, and the 4(b)(2) report. You may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). Copies of the proposed rule and supporting documentation, including the biological valuation, economic analysis, and 4(b)(2) report, can be found on the NMFS Northeast Region Web site at *http://www.nero.noaa.gov/prot_res/altsalmon/*. We will consider all comments pertaining to this designation received during the comment period in preparing the final rule.

Classification

This proposed rule has been determined to be significant for purposes of Executive Order (E.O.) 12866. We have integrated the regulatory principles of the E.O. into the development of this proposed rule to the extent consistent with the mandatory duty to designate critical habitat, as defined in the ESA.

We have determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the State of Maine. The determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act (16 U.S.C. 1451 et seq.).

An environmental analysis as provided for under the National Environmental Policy Act for critical habitat designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. Denied, 116 S.Ct. 698 (1996).

We prepared an initial regulatory flexibility analysis (IRFA) pursuant to section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*)(IEc, 2008b). This IRFA only analyzes the impacts to those areas where critical habitat is proposed and is available at the location identified in the **ADDRESSES** section. The IRFA is summarized below, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows:

A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained in the preamble of this rule and are not repeated here.

After reviewing the land use activities evaluated in the economic analysis conducted for this action, the types of small entities that may be impacted if this rule were adopted include those entities involved in hydropower, agriculture, and development activities.

The total number of affected small entities includes up to 12 dam owners and 65 farms. There are an unknown number of small entities involved in development projects. Because impacts are calculated on a per acre basis and not for specific projects, it is not possible to identify specific landowners. We seek public comment on this topic.

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements beyond the potential economic impacts described below and any reporting requirements associated with reporting on the progress and success of implementing project modifications, which do not require special skills to satisfy. Third party applicants or permittees may also incur costs associated with participating in the administrative process of consultation along with the permitting Federal agency.

No Federal laws or regulations duplicate or conflict with the proposed rule. Existing Federal laws and regulations overlap with the proposed rule only to the extent that they provide protection to marine natural resources generally. However, no existing laws or regulations specifically prohibit destruction or adverse modification of critical habitat for, and focus on the recovery of, Atlantic salmon.

The IRFA estimates that approximately 65 small farms (average annual receipts of less than $750,000), or roughly nine percent of the farms across the DPS, may be affected by critical habitat designation (IEc, 2008b). The average annual revenue of these farms was estimated at $76,000 (USDA 2002 Census of Agriculture). The estimated average losses per small farm are estimated at $6,100 (IEc, 2008b).

Impacts to development are based on impacts to landowners associated with constraints on development within a 30-meter buffer of streams within the study area. The present value of impacts to all development projects is estimated at $94.6 million to $127 million. Section 3 of the Small Business Act defines small business as any firm that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act, and those size standards can be found in 13 CFR 121.201. Size standards are expressed either in number of employees or annual receipts in millions of dollars depending on the specific type of business. Because impacts to development projects are determined on a per acre basis and not by the specific type of development project, we were unable to determine who the specific affected landowners are. In some cases, some portion of these landowners are likely individuals and not business, and therefore not relevant to the small business analysis, while it is also likely that some of these landowners are businesses, including small businesses, that may be impacted by constraints.

Land developers and subdividers are one type of small business that may be affected by constraints stemming from the proposed critical habitat designation (IEc, 2008b). The available data suggests that 188 small land developers operate in counties that overlap the 48 HUCs containing proposed critical habitat, accounting for 97 percent of the subdividers in the region (IEc, 2008b). The information available, however, is insufficient to estimate the impacts on these entities or to identify other potentially affected landowners (IEc, 2008b).

Impacts to hydropower were estimated for small hydropower producers identified by the Small Business Administration as those producing less than four billion kilowatt-hours annually and are likely to experience impacts associated with the critical habitat designation. The IRFA analysis (IEc, 2008b) estimates 12 hydropower producers within the 48 HUCs where critical habitat is proposed may be affected with an estimated costs accrued by these dam owners between $17 annually to $507,000 annually (IEc, 2008b).

We considered and rejected the alternative of not designating critical habitat for any of the specific areas because such an action does not meet the legal requirements of the ESA. We also considered not excluding any specific areas within the occupied range for reasons of economic impact given the critically low abundance of the species. We concluded, however, that the quantity of habitat is less of a factor limiting the abundance of the species than are the accessibility to the habitat through barriers to migration and marine survival issues. Therefore, allowing for exclusion of some specific areas that have low biological value would not likely further reduce recovery efforts. We also considered a more straightforward comparison of economic cost and biological value such that any areas for which the costs of designation were greater than the biological value of the area to the species would qualify for exclusion. We chose, however, to exclude only those areas that have a biological value score of ''1'' (unless the area is without dams) because excluding all of specific areas for which the costs of designation were greater than the biological value of the area to the species would reduce the quantity of habitat below what is needed to achieve conservation of the species.

Critical habitat designation may encourage landowners to develop Habitat Conservation Plans (HCPs). Under section 10 of the ESA, landowners seeking an incidental take permit must develop an HCP to counterbalance the potential harmful effects that an otherwise lawful activity may have on a species. The purpose of the habitat conservation planning process is to ensure that the effects of incidental take are adequately minimized and mitigated. Thus, HCPs are developed to ensure compliance with section 9 of the ESA and to meet the requirements of section 10 of the ESA. Neither the IRFA nor the *Economic Analysis of Critical Habitat Designation for the Gulf of Maine Distinct Population Segment of Atlantic Salmon* forecasts effects associated with the development of HCPs. We solicit comment on such impacts, particularly with respect to the development of HCPs by small entities.

Pursuant to the Executive Order on Federalism, E.O. 13132, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action and request comments from the appropriate officials in Maine where Atlantic salmon occur.

The data and analyses supporting this proposed action have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (IQA) (Section 515 of Pub. L. 106–554).

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the IQA. The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the scientific information that supports the proposal to designate critical habitat for the GOM DPS of Atlantic salmon and incorporated the peer review comments prior to dissemination of this proposed

rulemaking. A Draft 4(b)(2) Report (NMFS, 2008) that supports the proposal to designate critical habitat for the GOM DPS of Atlantic salmon was also peer reviewed pursuant to the requirements of the Bulletin and is available on our Web site (see **ADDRESSES**).

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

References Cited

A complete list of all references cited in this rule making can be found on our Web site at *http://www.nero.noaa.gov/prot_res/altsalmon/,* and is available upon request from the NMFS Northeast Regional Office in Gloucester, Massachusetts (see **ADDRESSES**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: August 29, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend 50 CFR part 226 as set forth below:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Add § 226.217, to read as follows:

§ 226.217 Critical habitat for the Gulf of Maine Distinct Population Segment of Atlantic Salmon (Salmo salar).

Critical habitat is designated to include all perennial rivers, streams, and estuaries and lakes connected to the marine environment within the range of the Gulf of Maine Distinct Population Segment of Atlantic Salmon (GOM DPS) except for those particular areas within the range which are specifically excluded. Within the GOM DPS, the primary constituent elements (PCEs) for Atlantic salmon include sites for spawning and incubation, sites for juvenile rearing, and sites for migration. The physical and biological features of habitat are those features that allow Atlantic salmon to successfully use sites for spawning and rearing and sites for migration. These features include substrate of suitable size and quality; rivers and streams of adequate flow, depth, water temperature and water quality; rivers, streams, lakes and ponds with sufficient space and diverse, abundant food resources to support growth and survival; waterways that allow for free migration of both adult and juvenile Atlantic salmon; and diverse habitat and native fish communities in which salmon interact with while feeding, migrating, spawning, and resting.

(a) The GOM DPS is divided into three salmon habitat recovery units (SHRUs) within the range of the GOM DPS: These are the Downeast Coastal SHRU, the Penobscot Bay SHRU and the Merrymeeting Bay SHRU. Critical habitat is only being considered in specific areas currently occupied by the species. Critical habitat specific areas are identified by hydrological unit codes (HUC) and counties within the States of Maine. Hydrological units are those defined by the Department of Interior (DOI), U.S. Geological Survey (USGS) publication, ''Hydrologic Unit Maps'' Water Supply Paper (Seaber *et al.*, 1994) and the following DOI, USGS 1:500,000 scale hydrologic unit map: State of Maine: these documents are incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and the maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/Federal_register/code_of_Federal_regulations/ibr_locations.html.*

(b) Critical habitat is designated in the Maine counties and towns for the three SHRUs described in paragraphs (b)(1) through (b)(2) of this section. The textual descriptions of critical habitat for each SHRU are included in paragraphs (b)(3) through (b)(6) of this section, and these descriptions are the definitive source for determining the critical habitat boundaries. General location maps are provided at the end of each SHRU description (paragraph (b)(2) of this section) and are for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(1). *Maine counties and towns affected.* Critical habitat is designated for the following SHRUs in the following counties and towns.

(i) COUNTIES AND TOWNS PARTIALLY OR ENTIRELY WITHIN AREAS CONTAINING CRITICAL HABITAT in the Downeast Coastal SHRU

Sub-basin	County	Town
Coastal Washington Hancock.	Penobscot	Clifton, Eddington, Grand Falls Twp, Greenfield Twp, Summit Twp.
	Hancock	Waltham, Bucksport, Dedham, Eastbrook, Ellsworth, Fletchers Landing Twp, Franklin, Great Pond, Hancock, Lamoine, Mariaville, Oqiton Twp, Orland, Osborn, Trenton Otis, Sullivan, Surry, T10 SD, T16 MD, T22 MD, T28 MD, T32 MD, T34 MD, T35 MD, T39 MD, T40 MD, T41 MD, T7 SD, T9 SD.
	Washington	Addison, Alexander, Baileyville, Baring Plt, Beddington, Centerville Twp, Charlotte, Cherryfield, Columbia, Columbia Falls, Cooper, Crawford, Cutler, Deblois, Dennysville, Devereaux Twp, East Machias, Edmunds Twp, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion Twp, Marshfield, Meddybemps, Milbridge, No 14 Twp, No 21 Twp, Northfield, Princeton, Roque Bluffs, Sakom Twp, Steuben, Trescott Twp, Whiting, Whitneyville, Wesley T18 ED BPP, T18 MD BPP, T19 ED BPP, T19 MD BPP, T24 MD BPP, T25 MD BPP, T26 ED BPP, T27 ED BPP, T30 MD BPP, T31 MD BPP, T36 MD BPP, T37 MD BPP, T42 MD BPP, T43 MD BPP.

(ii) COUNTIES AND TOWNS PARTIALLY OR ENTIRELY WITHIN AREAS CONTAINING CRITICAL HABITAT IN THE Penobscot Bay SHRU

Sub-basin	County	Town
Piscataquis	Penobscot	T4 Indian Purchase Twp, Long A Twp, Seboeis Plt, Mattamiscontis Twp, Maxfield, Lagrange, Charleston, Howland, T3 R9 NWP, Edinburg, Hopkins Academy Grant Twp, Garland.
	Piscataquis	Shawtown Twp, TA R11 WELS, TA R10 WELS, TB R10 WELS, Greenville, T7 R9 NWP, Bowdoin College Grant West Twp, T4 R9 NWP, Ebeemee Twp, Moosehead Junction Twp, Lake View Plt, Brownville, Milo, Blanchard Twp, Sebec, Dover-Foxcroft, Abbot, Kingsbury Plt, Parkman, Wellington, Frenchtown Twp, Medford, Sangerville, TB R11 WELS, Katahdin Iron Works Twp, Elliottsville Twp, Shirley, Guilford, Atkinson, Beaver Cove, Williamsburg Twp, Bowdoin College Grant East Twp, Barnard Twp, Monson, Orneville Twp.
	Somerset	Squaretown Twp, Mayfield Twp, Brighton Plt, East Moxie Twp, Bald Mountain Twp T2 R3.
East Branch	Aroostook	Moro Plt, T7 R5 WELS.
	Penobscot	Mount Chase, East Millinocket, Grindstone Twp, Herseytown Twp, Medway, Patten, Soldiertown Twp T2 R7 WELS, Stacyville, T1 R6 WELS, T2 R8 WELS, T3 R7 WELS, T3 R8 WELS, T4 R7 WELS, T4 R8 WELS, T5 R7 WELS, T5 R8 WELS, T6 R6 WELS, T6 R7 WELS, T6 R8 WELS, T7 R6 WELS, T7 R7 WELS, T7 R8 WELS, T8 R6 WELS, T8 R7 WELS, T8 R8 WELS.
	Piscataquis	Mount Katahdin Twp, Nesourdnahunk Twp, Trout Brook Twp, T3 R10 WELS, T4 R10 WELS, T4 R9 WELS, T5 R11 WELS, T5 R9 WELS, T6 R10 WELS, T6 R11 WELS, T7 R10 WELS, T7 R11 WELS, T7 R12 WELS, T7 R9 WELS.
Mattawamkeag	Aroostook	Amity, Bancroft, Benedicta Twp, Crystal, Dudley Twp, Dyer Brook, Forkstown Twp, Moro Plt, North Yarmouth Academy Grant Twp, Oakfield, Orient, Reed Plt, Sherman, Silver Ridge Twp, Smyrna, Upper Molunkus Twp, Webbertown Twp, Weston, T1 R5 WELS, T2 R4 WELS, T3 R3 WELS, T3 R4 WELS, T4 R3 WELS, T7 R5 WELS, TA R2 WELS.
	Penobscot	Carroll Plt, Drew Plt, Herseytown Plt, Kingman Twp, Lee, Lincoln, Mattawamkeag, Mount Chase, Patten, Prentiss Twp T7 R3 NBPP, Springfield, Stacyville, Webster Plt, Winn, T1 R6 WELS, T4 R7 WELS, T6 R6 WELS.
	Washington	T8 R3 NBPP, T8 R4 NBPP.
Penobscot	Aroostook	Benedicta TWP, Molunkus Twp, Sherman, T1 R5 WELS.
	Hancock	Amherst, Blue Hill, Bucksport, Castine, Dedham, Great Pond, Oqiton Twp, Orland, Penobscot, Surry, Verona Island, T3 ND, T32 MD, T34 MD, T35 MD, T39 MD, T40 MD, T41 MD.
	Penobscot	Alton, Argyle Twp, Bangor, Brewer, Burlington, Carmel, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Eddington, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Twp, Hampden, Hermon, Herseytown Twp, Holden, Howland, Hudson, Indian Island, Kenduskeag, Lagrange, Lakeville, Lee, Levant, Lincoln, Lowell, Mattamiscontis Twp, Mattawamkeag, Maxfield, Medway, Milford, Newburgh, Newport, Old Town, Orono, Orrington, Passadumkeag, Plymouth, Seboeis Plt, Springfield, Stacyville, Stetson, Summit Twp, Veazie, Winn, Woodville T1 R6 WELS, T2 R8 NWP, T2 R9 NWP, T3 R1 NBPP, T3 R9 NWP, TA R7 WELS.
	Piscataquis	Medford.
	Waldo	Brooks, Frankfort, Jackson, Knox, Monroe, Montville, Prospect, Searsport, Stockton Springs, Swanville, Thorndike, Waldo, Winterport.
Penobscot Bay	Waldo	Belfast, Belmont, Brooks, Frankfort, Knox, Lincolnville, Monroe, Montville, Morrill, Northport, Searsmont, Searsport, Swanville, Waldo.

(iii) COUNTIES AND TOWNS PARTIALLY OR ENTIRELY WITHIN AREAS CONTAINING CRITICAL HABITAT IN THE MERRYMEETING BAY SHRU

Sub-basin	County	Town
Lower Androscoggin	Androscoggin	Auburn, Durham, Greene, Leeds, Lewiston, Lisbon, Sabattus, Wales.
	Cumberland	Brunswick, Freeport.
	Kennebec	Litchfield, Monmouth.
	Sagadahoc	Bath, Bowdoin, Bowdoinham, Richmond, Topsham.
Merrymeeting Bay	Androscoggin	Livermore Falls.
	Franklin	Avon, Carthage, Chesterville, Farmington, Freeman Twp, Industry, Jay, Madrid Twp, Mount Abram Twp, New Sharon, New Vineyard, Perkins TWP, Phillips, Redington Twp, Salem Twp, Sandy River Plt, Strong, Temple, Township 6 North of Weld, Township E, Washington Twp, Weld, Wilton.
	Kennebec	Augusta, Benton, Chelsea, China, Clinton, Farmingdale, Fayette, Gardiner, Hallowell, Manchester, Oakland, Pittston, Randolph, Rome, Sidney, Vassalboro, Vienna, Waterville, West Gardiner, Windsor, Winslow.
	Lincoln	Alna, Dresden, Whitefield, Wiscasset.
	Sagadahoc	Bowdoinham, Perkins Twp Swan Island, Richmond, Woolwich.

(iii) COUNTIES AND TOWNS PARTIALLY OR ENTIRELY WITHIN AREAS CONTAINING CRITICAL HABITAT IN THE MERRYMEETING BAY SHRU—Continued

Sub-basin	County	Town
Coastal Drainages East of Small Point.	Somerset	Anson, Athens, Bingham, Brighton Plt, Canaan, Cornville, Fairfield, Hartland, Madison, Mayfield Twp, Mercer, Norridgewock, Pittsfield, Skowhegan, Smithfield, Solon, Starks.
	Cumberland	Brunswick.
	Kennebec	Albion, Pittston, Windsor.
	Knox	Appleton, Camdem, Cushing, Friendship, Hope, Rockland, Rockport, Saint George, South Thomaston, Thomaston, Union, Warren, Washington.
	Lincoln	Alna, Boothbay, Boothbay Harbor, Bremen, Briston, Dresden, Edgecomb, Hibberts Gore, Jefferson, Newcastle, Nobleboro, Somerville, Southport, Waldoboro, Westport Island, Whitefield, Wiscasset.
	Sagadahoc	Arrowsic, Bath, Bowdoinham, Georgetown, Phippsburg, West Bath, Woolwich.
	Waldo	Belmont, Freedom, Liberty, Lincolnville, Montville, Morrill, Palermo, Searsmont.

(2). *Critical habitat boundaries.* Critical habitat includes the stream channels within the designated stream reaches, and includes a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas where the ordinary high-water line has not been defined, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on an annual flood series. Critical habitat in estuaries is defined by the perimeter of the water body as displayed on standard 1:24,000 scale topographic maps or the elevation of extreme high water, whichever is greater.

(i) *Downeast Coastal SHRU.* The Downeast Coastal SHRU encompasses fourteen HUC 10 watersheds covering approximately 1,847,698 acres within Washington and Hancock Counties in Eastern Maine that contain approximately 6,039 km of perennial rivers, streams, and estuary and approximately 365 square km of lakes connected to the marine environment. Within this basin 11 HUC 10s are considered to be currently occupied (Figure 1) and contain critical habitat (Figure 2).

BILLING CODE 3510–22–P

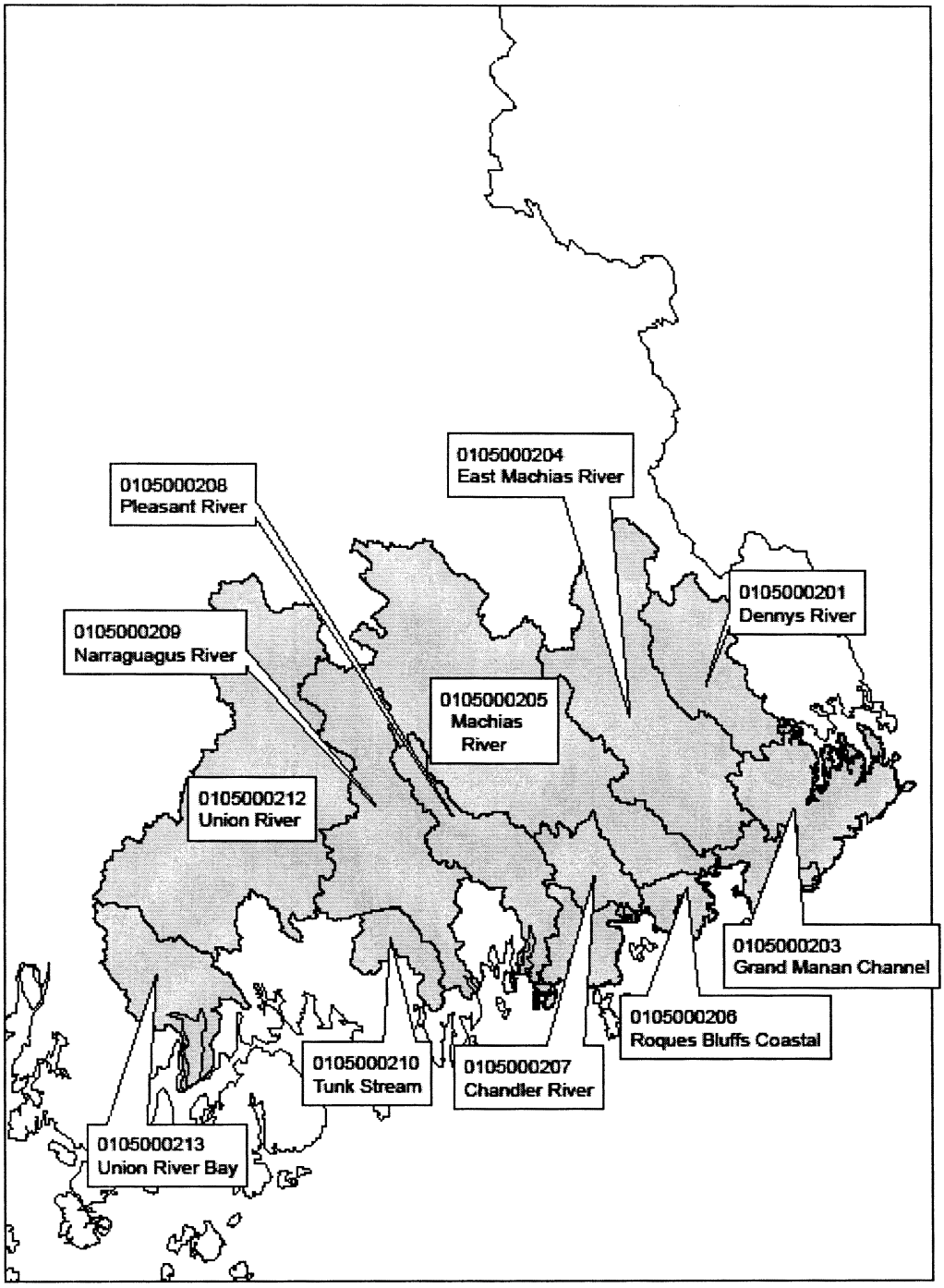

Figure 1. Specific areas that meet the definition of critical habitat in the Downeast Coastal SHRU

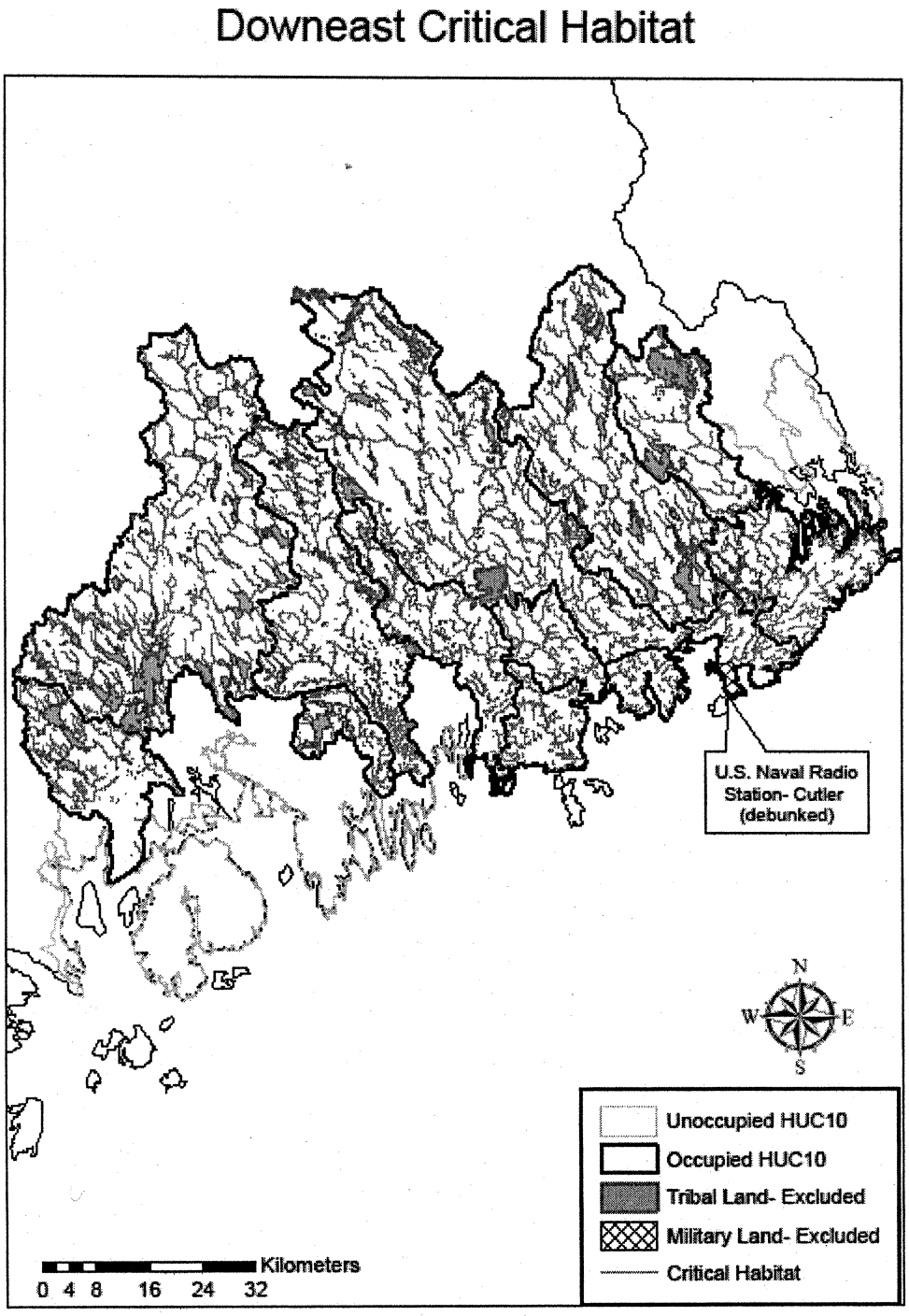

Figure 2. Critical habitat in the Downeast Coastal SHRU, showing particular areas excluded

(ii) *Penobscot Bay SHRU.* The Penobscot Bay Salmon Habitat Recovery Unit (SHRU) includes the entire Penobscot Basin and extends west as far as, and including the Ducktrap watershed, and east as far as, and including the Bagaduce watershed. The Penobscot Bay SHRU drains 54,942,705 acres containing approximately 17,443 km of perennial rivers, streams, and estuary and 1,115 sq. km of lakes connected to the marine environment and occupies sections of Aroostook, Hancock, Penobscot, Piscataquis, Somerset, Waldo, and Washington counties (Baum, 1983). The Penobscot SHRU encompasses forty-six HUC 10 watersheds embedded within six major sub-basins; the West Branch, East Branch, Piscataquis, Mattawamkeag, Penobscot River and Penobscot Bay. Within the Penobscot SHRU, there are twenty-nine HUC 10 watersheds containing a combination of perennial rivers, lakes, streams and/or estuaries connected to the marine environment that have been identified as critical habitat (Figure 3 and Figure 4). The waters in the remaining fifteen HUC 10 watersheds are currently unoccupied habitat and therefore not designated as critical habitat.

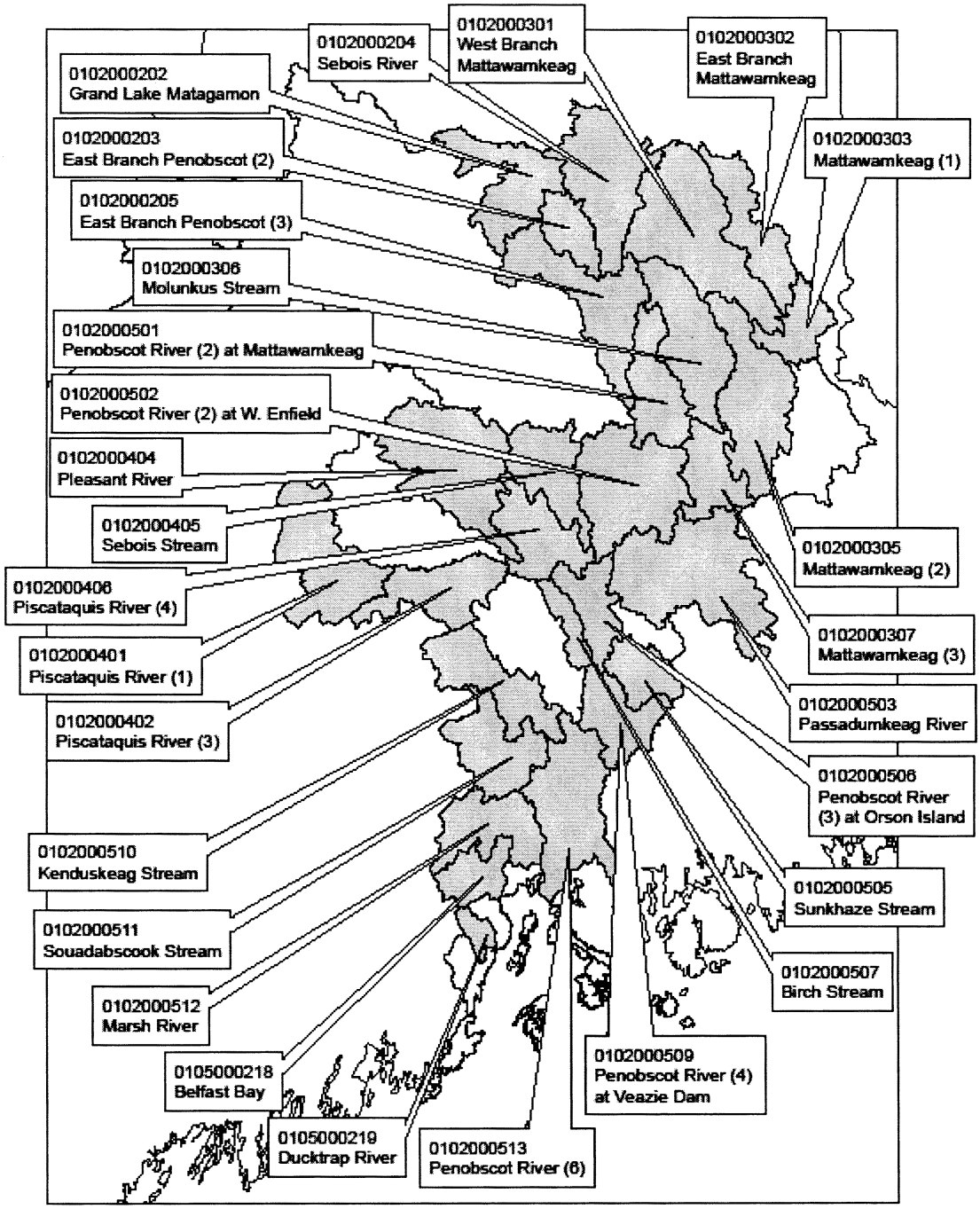

Figure 3. Specific Areas that meet the definition of critical habitat in the Penobscot SHRU

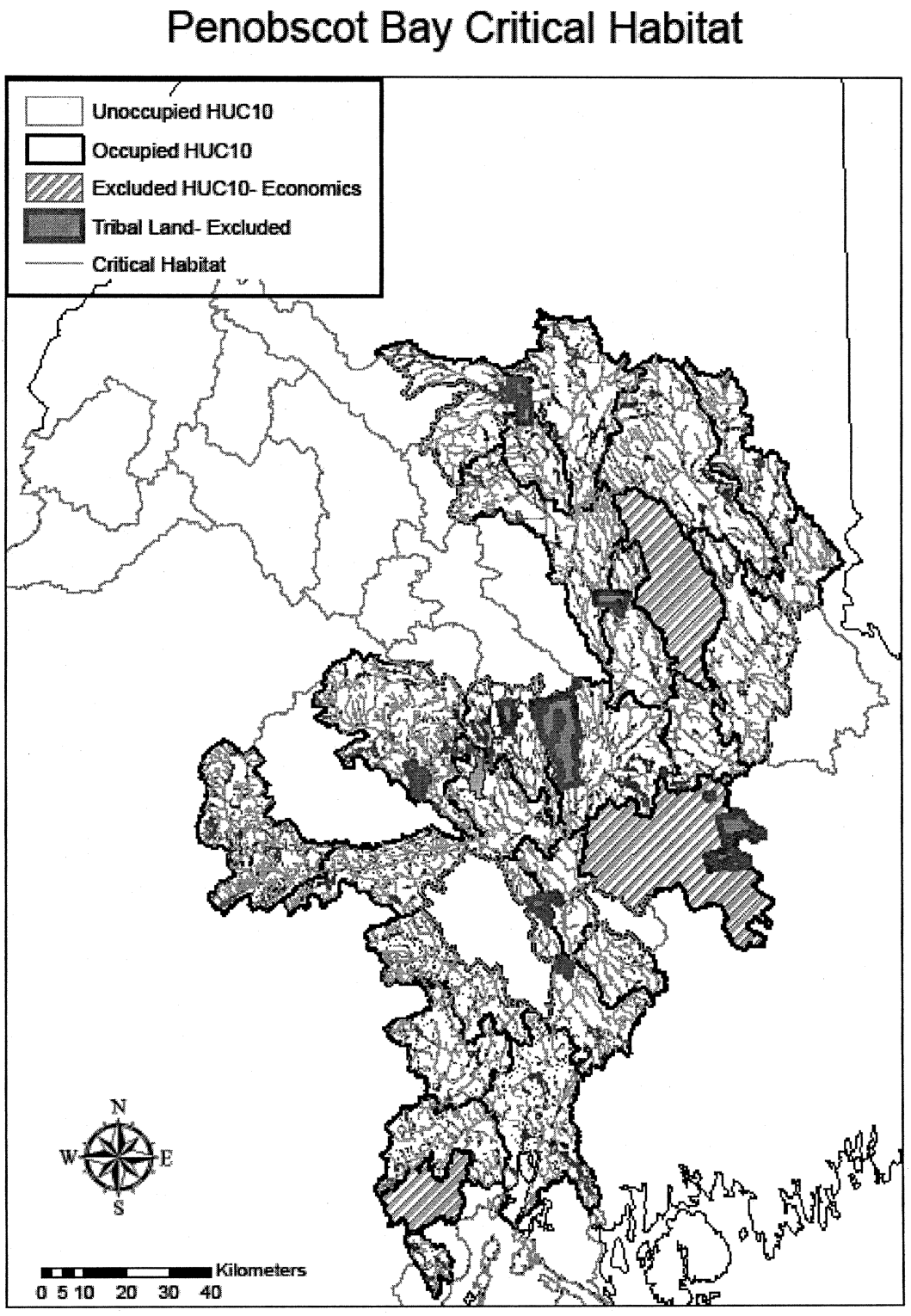

Figure 4. Critical habitat within the Penobscot SHRU, showing particular areas excluded

(iii) *Merrymeeting Bay SHRU.* The Merrymeeting Bay SHRU extends west as far as, and including the Androscoggin and east as far as, and including the St. George watershed. The Merrymeeting Bay SHRU contains approximately 21,002 km of perennial rivers, streams and estuary and 1,372 sq. km of lakes that drain a land area of 6,651,620 acres. The Merrymeeting Bay SHRU contains forty-five HUC 10 watersheds embedded within six major sub-basin which include the Upper Androscoggin, Lower Androscoggin, Kennebec River above Forks, Dead River, Kennebec at Merrymeeting Bay, and coastal drainages east of small point. Of the forty-five HUC 10 watersheds, nine are considered occupied and contain rivers, lakes, streams and estuary considered to be critical habitat (Figure 5 and Figure 6). The remaining thirty-six HUC 10's are not occupied and do not contain critical habitat.

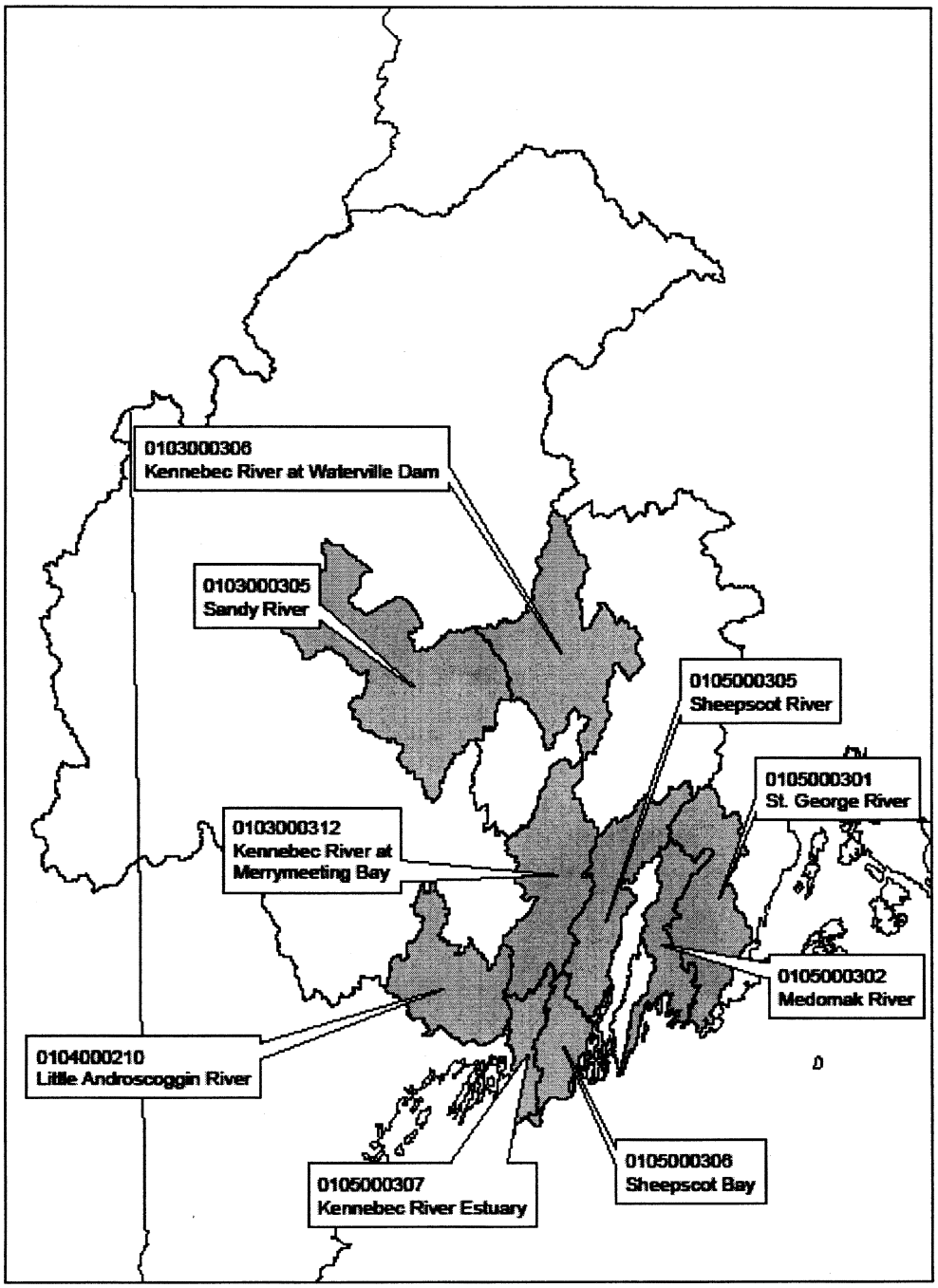

Figure 5. Specific areas that meet the definition of critical habitat in the Merrymeeting Bay SHRU

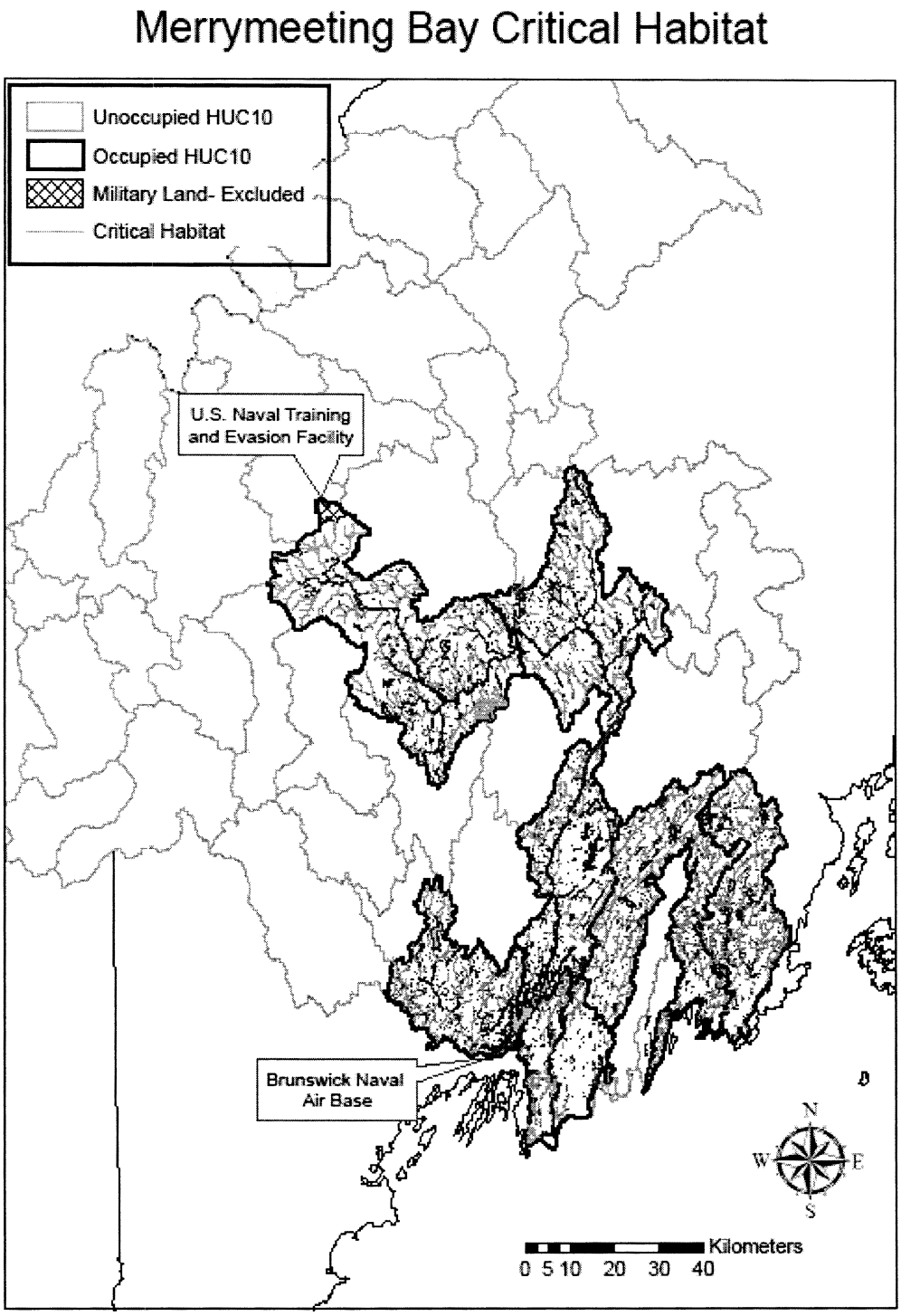

Figure 6. Critical habitat in the Merrymeeting Bay SHRU, showing particular areas excluded

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(3) *Primary constituent elements.* Within the GOM DPS, the primary constituent elements (PCEs) for the conservation of Atlantic salmon include sites for spawning and incubation, sites for juvenile rearing, and sites for migration. The physical and biological features of the habitat that are essential to the conservation of Atlantic salmon are those features that allow Atlantic salmon to successfully use sites for spawning and rearing and sites for migration. These features include:

(i) Deep, oxygenated pools and cover (*e.g.* boulders, woody debris, vegetation, etc.), near freshwater spawning sites, necessary to support adult migrants during the summer while they await spawning in the fall;

(ii) Freshwater spawning sites that contain clean, permeable gravel and cobble substrate with oxygenated water and cool water temperatures to support spawning activity, egg incubation and larval development;

(iii) Freshwater spawning and rearing sites with clean gravel in the presence of cool, oxygenated water and diverse substrate to support emergence, territorial development and feeding activities of Atlantic salmon fry;

(iv) Freshwater rearing sites with space to accommodate growth and survival of Atlantic salmon parr, and population densities needed to support sustainable populations;

(v) Freshwater rearing sites with a combination of river, stream, and lake habitats, that accommodate parr's ability to occupy many niches and to maximize parr production;

(vi) Freshwater rearing sites with cool, oxygenated water to support growth and survival of Atlantic salmon parr;

(vii) Freshwater rearing sites with diverse food resources to support growth and survival of Atlantic salmon parr;

(viii) Freshwater and estuary migratory sites free from physical and biological barriers that delay or prevent access to spawning grounds needed to support a recovered population;

(ix) Freshwater and estuary migration sites with abundant, diverse native fish communities to serve as a protective buffer against predation;

(x) Freshwater and estuary migration sites free from physical and biological barriers that delay or prevent emigration of smolts to the marine environment;

(xi) Freshwater and estuary migration sites with sufficiently cool water temperatures and water flows that coincide with diurnal cues to stimulate smolt migration;

(xii) Freshwater migration sites with water chemistry needed to support sea water adaptation of smolts; and

(xiii) Freshwater and marine sites with diverse, abundant assemblages of native fish communities to enhance survivorship as Atlantic salmon smolts emigrating through the estuary.

(4) *Exclusion of Indian lands.* Critical habitat does not include occupied habitat areas on Indian lands. The Indian lands specifically excluded from critical habitat are those defined in the Secretarial Order 3206, including:

(i) Lands held in trust by the United States for the benefit of any Indian Tribe;

(ii) Lands held in trust by the United States for the benefit of any Indian Tribe or individual subject to restrictions by the United States against alienation;

(iii) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(iv) Fee lands within the reservation boundaries owned by individual Indians. Within the GOM DPS, approximately 79,000 acres of tribal lands in the Penobscot SHRU and 5,000 acres in the Downeast Coastal SHRU have been identified as particular areas that contain sites for spawning and rearing and sites for migration and are proposed for exclusion from critical habitat.

(5) *Lands owned or controlled by the Department of Defense.* Additionally, critical habitat does not include the following areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a). Excluded from designation are:

(i) The 435 acres of the Brunswick Naval Air Station in Brunswick, Maine within the Little Androscoggin HUC 10 watershed in the Merrymeeting Bay SHRU.

(ii) The 5,328 acres of the Brunswick Naval Air Station's cold weather survival, evasion, resistance and escape school within the Sandy River HUC 10 watershed in the Merrymeeting Bay SHRU.

(6). *Description of critical habitat.* Critical habitat is designated to include the areas defined in the following hydrological units in the three SHRUs with the exception of those particular areas specifically identified:

(i) DOWNEAST COASTAL SHRU. CRITICAL HABITAT, EXCLUSIONS AND EXCLUSION TYPE BY HUC 10 WATERSHEDS

	HUC 10 code	HUC 10 watershed name	Critical habitat		Excluded areas [type] [1]	
			River, stream and estuary (km)	Lake (sq. km)	River, stream and estuary (km)	Lake (sq. km)
Coastal Washington Hancock sub-basin.	0105000201	Dennys River	218	45		
	0105000203	Grand Manan Channel	641	15.5		
	0105000204	East Machias River	575	70	16 [T]	0.1 [T]
	0105000205	Machias River	991	58		
	0105000206	Roque Bluffs Coastal	321	1		
	0105000207	Chandler River	154	0.1		
	0105000208	Pleasant River	325	6.5		
	0105000209	Narraguagus River	573	15.5		
	0105000210	Tunk Stream	117	14		
	0105000212	Graham Lake	976	121		
	0105000213	Union River Bay	303	18		
	0105000211	Bois Bubert Coastal	—	—		
	0105000214	Lamoine Coastal	—	—		
	0105000215	Mt. Desert Coastal	—	—		

[1] Exclusion types: [E] = Economic, [M] = Military, and [T] = Tribal.
— considered unoccupied at the time of listing.

(ii) PENOBSCOT BAY SHRU. CRITICAL HABITAT, EXCLUSIONS AND EXCLUSION TYPE BY HUC 10 WATERSHEDS

Sub-basin	HUC 10 code	HUC 10 watershed name	Critical habitat		Excluded areas [type] [1]	
			River, stream and estuary (km)	Lake (sq. km)	River, stream and estuary (km)	Lake (sq. km)
East Branch Penobscot sub-basin.	0102000202	Grand Lake Matagamon	320	25.5	6 [T]	0.5 [T]
	0102000203	East Branch Penobscot River (2).	178	3	1 [T]	
	0102000204	Seboeis River	418	31		
	0102000205	East Branch Penobscot River (3).	585	5	3 [T]	
	0102000201	Webster Brook	—	—		
West Branch Penobscot sub-basin.	0102000101	North Branch Penobscot River.	—	—		
	0102000102	Seeboomook Lake	—	—		
	0102000103	W. Br. Penobscot R. at Chesuncook.	—	—		
	0102000104	Caucomgomok Lake	—	—		
	0102000105	Chesuncook Lake	—	—		
	0102000106	Nesowadnehunk Stream	—	—		
	0102000107	Nahamakanta Stream	—	—		
	0102000108	Jo-Mary Lake	—	—		
	0102000109	West Branch Penobscot River (3).	—	—		
	0102000110	West Branch Penobscot River (4).	—	—		
Mattawamkeag River sub-basin.	0102000301	West Branch Mattawamkeag River.	657	22		
	0102000302	East Branch Mattawamkeag River.	315	12		
	0102000303	Mattawamkeag River (1)	192	0.5		
	0102000305	Mattawamkeag River (2)	451	8		
	0102000307	Mattawamkeag River (3)	226	3		
	0102000306	Molunkus Stream	0	0	438 [E]	11 [E]
	0102000304	Baskahegan Stream	—	—		
Piscataquis River sub-basin	0102000401	Piscataquis River (1)	762	15		
	0102000402	Piscataquis River (3)	382	6		
	0102000404	Pleasant River	812	17	16 [T]	
	0102000405	Seboeis Stream	308	31	12.2 [T]	5 [T]
	0102000406	Piscataquis River (4)	328	30		
	0102000403	Sebec River	—	—		
Penobscot River sub-basin	0102000501	Penobscot River (1) at Mattawamkeag.	287	4.5	5 [T]	2.5 [T]
	0102000502	Penobscot River (2) at West Enfield.	474	23.5	80 [T]	5.5 [T]
	0102000503	Passadumkeag River	0	0	583 [E]	79 [E]
	0102000505	Sunkhaze Stream	117	0.5		
	0102000506	Penobscot River (3) at Orson Island.	205	0.5	6 [T]	
	0102000507	Birch Stream	105	1	15 [T]	
	0102000509	Penobscot River (4) at Veazie Dam.	225	10		
	0102000510	Kenduskeag Stream	420	1.5		
	0102000511	Souadabscook Stream	341	5.5		
	0102000512	Marsh River	319	3		
	0102000513	Penobscot River (6)	514	29		
	0102000504	Olamon Stream	—	—		
	0102000508	Pushaw Stream	—	—		
Penobscot Bay sub-basin	0105000218	Belfast Bay	177	9		
	0105000219	Ducktrap River	76	4		
	0105000216	Bagaduce River	—	—		
	0105000217	Stonington Coastal	—	—		
	0105000220	West Penobscot Bay Coastal.	—	—		

[1] Exclusion types: [E] = Economic, [M] = Military, and [T] = Tribal—considered unoccupied at the time of listing.

(iii) MERRYMEETING BAY SHRU. CRITICAL HABITAT, EXCLUSIONS, AND EXCLUSION TYPE BY HUC 10 WATERSHED

Sub-basin	HUC 10 code	HUC 10 watershed name	Critical habitat		Excluded areas [type] [1]	
			River, stream and estuary (km)	Lake (sq. km)	River, stream and estuary (km)	Lake (sq. km)
Kennebec River above the Forks sub-basin.	0103000101	South Branch Moose River	—	—	.....	.....
	0103000102	Moose River (2) above Attean Pond.	—	—	.....	.....
	0103000103	Moose River (3) at Long Pond.	—	—	.....	.....
	0103000104	Brassua Lake	—	—	.....	.....
	0103000105	Moosehead Lake	—	—	.....	.....
	0103000106	Kennebec River (2) above The Forks.	—	—	.....	.....
Dead River sub-basin	0103000201	North Branch Dead River ..	—	—	.....	.....
	0103000202	South Branch Dead River	—	—	.....	.....
	0103000203	Flagstaff Lake	—	—	.....	.....
	0103000204	Dead River	—	—	.....	.....
Merrymeeting Bay sub-basin.	0103000305	Sandy River	1215	15.8	12 [M]	0.2 [M]
	0103000306	Kennebec River at Waterville Dam.	794	14	.....	.....
	0103000312	Kennebec River at Merrymeeting Bay.	621	22	.....	.....
	0103000310	Messalonskee Stream	—	—	.....	.....
	0103000301	Kennebec River (4) at Wyman Dam.	—	—	.....	.....
	0103000302	Austin Stream	—	—	.....	.....
	0103000303	Kennebec River (6)	—	—	.....	.....
	0103000304	Carrabassett River	—	—	.....	.....
	0103000307	Sebasticook River at Pittsfield.	—	—	.....	.....
	0103000308	Sebasticook River (3) at Burnham.	—	—	.....	.....
	0103000309	Sebasticook River (4) at Winslow.	—	—	.....	.....
	0103000311	Cobbosseecontee Stream	—	—	.....	.....
Upper Androscoggin sub-basin.	0104000101	Mooselookmeguntic Lake ..	—	—	.....	.....
	0104000102	Umbagog Lake Drainage ..	—	—	.....	.....
	0104000103	Aziscohos Lake Drainage	—	—	.....	.....
	0104000104	Magalloway River	—	—	.....	.....
	0104000105	Clear Stream	—	—	.....	.....
	0104000106	Middle Androscoggin River	—	—	.....	.....
Lower Androscoggin sub-basin.	0104000210	Little Androscoggin River ..	549	10.5	1 [M]	.....
	0104000201	Gorham-Shelburne Tributaries.	—	—	.....	.....
	0104000202	Androscoggin River at Rumford Point.	—	—	.....	.....
	0104000203	Ellis River	—	—	.....	.....
	0104000204	Ellis River	—	—	.....	.....
	0104000205	Androscoggin River above Webb River.	—	—	.....	.....
	0104000206	Androscoggin River at Riley Dam.	—	—	.....	.....
	0104000207	Androscoggin River at Nezinscot River.	—	—	.....	.....
	0104000208	Nezinscot River	—	—	.....	.....
	0104000209	Androscoggin R. above L. Andro. R.	—	—	.....	.....
Coastal Drainages East of Small Point sub-basin.	0105000301	St. George River	624	32	.....	.....
	0105000302	Medomak River	318	6	.....	.....
	0105000305	Sheepscot River	553	19	.....	.....
	0105000306	Sheepscot Bay	220	2	.....	.....
	0105000307	Kennebec River Estuary ...	276	3.5	.....	.....
	0105000303	Johns Bay	—	—	.....	.....
	0105000304	Damariscotta River	—	—	.....	.....

[1] Exclusion types: [E] = Economic, [M] = Military, and [T] = Tribal—considered unoccupied at the time of listing.

[FR Doc. E8–20603 Filed 9–2–08; 4:15 pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 73, No. 173

Friday, September 5, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to David *Rostkeromb.eop.gov* or fax to 202–395–7285. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0004.

Form Number: AID 11.

Title: Application for Approval of Commodity Eligibility.

Type of Submission: Renewal of Information Collection.

Purpose: USAID provides loans and grants to some developing countries in the form of Commodity Import Programs (CIPs). These funds are made available to host countries to be allocated to the public and private sectors for purchasing various commodities from the U.S., or in some cases, from other developing countries. In accordance with Section 604(f) of the Foreign Assistance Act of 1961, as amended, USAID may finance only those commodities which are determined eligible and suitable in accordance with various statutory requirements and agency policies. Using the Application for Approval of Commodity Eligibility (Form AID 11), the supplier certifies to USAID information about the commodities being supplied, as required in section 604(f), so that USAID may determine eligibility.

Annual Reporting Burden:

Respondents: 20.

Total annual responses: 40.

Total annual hours requested: 20 hours.

Dated: August 27, 2008.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. E8–20589 Filed 9–4–08; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 2, 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) 720–8958.

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.

Animal and Plant Health Inspection Service

Title: Importation of Restricted and Controlled Animal and Poultry Products and Byproducts, Organisms, and Vectors into the U.S.

OMB Control Number: 0579–0015.

Summary of Collection: Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in the world market of animals and animal products trade. The Veterinary Service, a program in APHIS, enforces regulations that pertain to the importation of restricted animal byproducts and controlled materials into the United States and the prevention of foreign animal disease incursions into the United States. The regulations under which APHIS conducts these disease prevention activities are contained in Title 9, Chapter 1, Subchapter D, Parts 94, 95, and 122 of the Code of Federal Regulations. APHIS collects information using several forms.

Need and Use of the Information: APHIS will collect information to ensure that imported items do not present a disease risk to the livestock and poultry populations of the United States. The information collected will provide APHIS with critical information concerning the origin and history of the items destined for importation into the United States. Without the information, the United States would be at risk of an exotic disease incursion.

Description of Respondents: Business or other for-profit; Individuals or households; Not for-profit institutions; Foreign Government.

Number of Respondents: 10,386.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 22,986.

Animal and Plant Health Inspection Service

Title: Endangered Species Regulations and Forfeiture Procedures.

OMB Control Number: 0579–0076.

Summary of Collection: The Endangered Species Act of 1973 (16 U.S.C. 1513 et seq.) directs Federal departments to utilize their authorities

under the Act to conserve endangered and threatened species. Section 3 of the Act specifies that the Secretary of Agriculture is authorized to promulgate such regulations as may be appropriate to enforce the Act. The regulations contained in 7 CFR 355 are intended to carry out the provisions of the Act. The Plant Protection and Quarantine (PPQ) division of USDA's Animal & Plant Health Inspection Service (APHIS) is responsible for implementing these regulations. Specifically, Section 9(d) of the Act authorizes 7 CFR 355.11, which requires a general permit to engage in the business of importing or exporting terrestrial plants listed in 50 CFR Parts 17 and 23. APHIS will collect information using several PPQ forms.

Need and Use of the Information: APHIS will collect information on the applicant's name and address, whether the applicant is affiliated with a business, and the address of all the applicant's business locations in order for the applicant to obtain a general permit. Upon approval of the permit, any endangered species shipped via mail must be sent to an authorized port of entry and must be accompanied by appropriate supporting documentation.

Description of Respondents: Business or other for-profit, individuals or households.

Number of Respondents: 16,584.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 8,533.

Animal and Plant Health Inspection Service

Title: Hawaiian and Territorial Quarantine Notices.

OMB Control Number: 0579–0198.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant products to prevent the introduction of plant pest into the United States or their dissemination within the United States. The Plant Protection and Quarantine, a program within the Animal and Plant Health Inspection Service (APHIS), is responsible for implementing the Act and does so through the enforcement of its Hawaiian and territorial quarantine regulations, contained in Part 318 of Title 7, Code of Federal Regulations. Hawaiian and territorial quarantines are necessary to prevent the spread of dangerous plant diseases and pests. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect information from a variety of individuals who are involved in growing, packing, handling, and transporting plants and plant products. The information collected will be used to determine compliance with regulations and for issuance of forms, permits, certificates, and other required documents.

Description of Respondents: Business or other for-profit, and farms.

Number of Respondents: 1,129.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 986.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–20608 Filed 9–4–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 2, 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) 720–8958.

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.

National Agricultural Statistics Service

Title: Agricultural Resource Management, Chemical Use, and Post-harvest Chemical Use Surveys.

OMB Control Number: 0535–0218.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to provide the public with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. Three surveys—the Agricultural Resource Management Study, the Fruit and Vegetable Chemical Use Surveys, and the Post-harvest Chemical Use Survey—are critical to NASS' ability to fulfill these objectives and to build the Congressionally mandated database on agricultural chemical use and related farm practices. NASS uses a variety of survey instruments to collect the information in conjunction with these studies.

Need and Use of the Information: The Agricultural Resource Management Study provides a robust database of information to address varied needs of policymakers. There are many uses for the information from this study including an evaluation of the safety of the Nation's food supply; input to the farm sector portion of the gross domestic product; and to provide a barometer on the financial condition of farm businesses. Data from the Fruit and Vegetable Chemical Use Surveys is used to assess the environmental and economic implications of various programs and policies and the impact on agricultural producers and consumers. The results of the Post-harvest Chemical Use Survey are used by the Environmental Protection Agency (EPA) to develop Food Quality Protection Act risk assessments. Other organizations use this data to make sound regulatory decisions.

Description of Respondents: Farms.

Number of Respondents: 109,917.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 61,134.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–20611 Filed 9–4–08; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ashland Ranger District Travel Management Planning, Custer National Forest; Powder River and Rosebud Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service plans to prepare an Environmental Impact Statement (EIS) to disclose the effects of designating National Forest System roads, trails, and areas available for public motorized use on the Ashland Ranger District (District), Custer National Forest. The decision will determine whether to add to or remove routes from the current network of National Forest System roads, trails, and areas for public motorized use on the District; designate the season of use and type of vehicle use for each road, trail, and area designated for public motorized use; and identify dispersed vehicle camping designations.

Once a decision is made, a Motor Vehicle Use Map (MVUM) will be prepared and distributed in compliance with the Forest Service's 2005 Motorized Travel Management Rule (36 CFR 212). The MVUM will show all routes and areas that are designated for public motorized use on the District. The MVUM will be the primary tool used for enforcement of motorized vehicle use designations on the ground. Those routes not designated on the MVUM will be legally closed to public motorized travel. This decision on motorized travel does not include motorized over-the-snow travel.

DATES: The draft environmental impact statement is planned to be released in October 2008 and the final environmental impact statement is planned for release in May 2009. The project was initially distributed for public scoping and comment November 26, 2007 through January 25, 2008.

ADDRESSES: Send written comments to Ashland Ranger District Travel Management Plan, Custer National Forest, 1310 Main Street, Billings, MT 59105 or call (406) 657–6205 extension 225.

If you prefer, you can submit comments on the Internet at *comments-northern-custer-ashland@fs.fed.us* by typing on the subject line ''Ashland RD Travel Management Plan.''

FOR FURTHER INFORMATION CONTACT: Doug Epperly, Project Coordinator, at (406) 657–6205 ext. 225.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The purpose of the proposal is to designate a system of roads, trails, and areas for public motorized use (excluding over-the-snow travel) on the District, while minimizing the adverse resource impacts of those designations. The system of roads, trails, and areas to be designated will be consistent with the laws, regulations, and policies governing the management of National Forest System lands. Specifically, this includes the Forest Service's 2005 Motorized Travel Management Rule (36 CFR 212); the 2001 Off-Highway Vehicle Record of Decision and Plan Amendment for Montana, North Dakota, and Portions of South Dakota (hereafter Tri-State OHV Plan); the subsequent Forest Plan Amendment Number 39; the 1992 Ashland Travel Plan; and the Custer National Forest and National Grasslands Land and Resource Management Plan (hereafter referred to as the Forest Plan, 1986).

The Chief of the Forest Service, in response to public comments on the 2005 Motorized Travel Rule, established timeframes for completing the route designation process nationally, including completing the District route designation by the end of September 2009.

Proposed Action. The proposed action is to designate roads, trails, and areas open to public motorized use, designate dispersed vehicle camping, and identify routes necessary for administrative use on the District (NFS lands). The route, trail, and area designations will also set specific seasons of use, where appropriate, and specify the type of vehicle use (*e.g.*, highway legal vehicle, ATVs). The Forest Service will produce a Motor Vehicle Use Map (MVUM) depicting those routes which are open to the general public for motorized use.

No Action Alternative. The No Action alternative would be to designate the current District system motorized roads for public motorized use, but would not address existing unauthorized (*i.e.*, non-system) routes or the lack of legal public right-of-way access for roads that cross private lands. A National Environmental Policy Act (NEPA) decision is not required to designate roads, trails, and areas for public motorized use that are currently part of the National Forest System of roads, trails and areas. Alternatives to the Proposed Action and No Action will depict differing combinations of routes to remain open to motorized travel.

A consequence of the no action alternative is that the existing non-system routes currently being used would not be available for public motorized use. Decommissioning or obliterating these routes, which may involve ground disturbing activities, is not a part of the Proposed Action or alternatives, and would generally require separate and site specific NEPA decisions regarding the implementation aspects of road closures. The environmental consequences of having routes closed to motorized travel will be evaluated in this environmental analysis.

Identification of new routes that would meet the goals and objectives for a motorized transportation system on NFS lands will not be a part of this travel management planning effort, but may be identified as an opportunity and would require separate, site-specific NEPA decisions to implement ground disturbing activities associated with new route construction.

Responsible Official: The Responsible Official is Steve E. Williams, Forest Supervisor, Custer National Forest, 1310 Main Street, Billings, MT 59105.

Nature of Decisions To Be Made: Based on the purpose and need for the proposed action, the Forest Supervisor will evaluate the Proposed Action and other alternatives in order to make the following decisions for the specific National Forest System lands:

- Determine any non-system routes that should be converted to system roads or trails;
- Determine the roads, trails, and areas that should be designated for public motorized travel; and,
- Determine the season and/or type of use for those routes open to public motorized travel; and,
- Determine if change in the extent and nature of dispersed vehicle camping is warranted.

Scoping Process: Public scoping was initiated November 26, 2007 and was concluded January 25, 2008. Public meetings were held in Ashland, Broadus, Miles City, and Billings, Montana in December 2007 to discuss the scoping document. The Forest Service received over 60 letters, personal comments, or phone calls.

The Forest Service has considered all public scoping comments and concerns that have been submitted, as well as resource related input from the interdisciplinary team and other agency resource specialists. This input will be used to identify issues to consider in the environmental analysis. A comprehensive list of key issues will be determined before the full range of alternatives is developed and the environmental analysis is begun.

Persons and organizations commenting during the initial scoping will remain on the mailing list for future

information about Ashland Ranger District Travel Management Planning.

The Responsible Official has determined that an Environmental Impact Statement is the appropriate NEPA document for this analysis.

Comments Requested: Given that scoping has been conducted and that public meetings have been conducted, comments are not being requested at this time.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for public comment. The comment period on the draft environmental impact statement will be 45 days from the date that the Environmental Protection Agency (EPA) publishes the notice of availability in the **Federal Register**.

Written comments are preferred and should include the name and address of the commenter. Comments submitted for this proposed action will be considered part of the public record.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Reviewers of draft environmental impact statements must structure their participation in the review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 US. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 409 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternative formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 29, 2008.

Steve E. Williams,

Forest Supervisor.

[FR Doc. E8–20586 Filed 9–4–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sioux Ranger District Travel Management Plan, Custer National Forest; Carter County, MT and Harding County, SD

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service intends to prepare an Environmental Impact Statement (EIS) to disclose the effects of designating National Forest System roads, trails, and areas available for public motorized use on the Sioux Ranger District (District), Custer National Forest. The decision will determine whether to add to or remove routes from the current network of National Forest System roads, trails, and areas for public motorized use on the District; designate the season of use and type of vehicle use for each road, trail, and area designated for public motorized use; and identify dispersed vehicle camping designations.

Once a decision is made, a Motor Vehicle Use Map (MVUM) will be prepared and distributed in compliance with the Forest Service's 2005 Motorized Travel Management Rule (36 CFR 212). The MVUM will show all routes and areas that are designated for public motorized use on the District. The MVUM will be the primary tool used for enforcement of motorized vehicle use designations on the ground. Those routes not designated on the MVUM will be legally closed to public motorized travel. This decision on motorized travel does not include motorized over-the-snow travel.

DATES: The draft environmental impact statement is planned to be released in October 2008 and the final environmental impact statement is planned for release in May 2009. The project was initially distributed for public scoping and comment October 22, 2007 through November 27, 2007.

ADDRESSES: Send written comments to Sioux Ranger District Travel Management Plan, Custer National Forest, 1310 Main Street, Billings, MT 59105 or call (406) 657–6205 extension 225.

If you prefer, you can submit comments on the Internet at *comments-northern-custer-sioux@fs.fed.us* by typing on the subject line ''Sioux RD Travel Management Plan.''

FOR FURTHER INFORMATION CONTACT: Doug Epperly, Project Coordinator, at (406) 657–6205 ext. 225.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The purpose of the proposal is to designate a system of roads, trails, and areas for public motorized use (excluding over-the-snow travel) on the District, while minimizing the adverse resource impacts of those designations. The system of roads, trails, and areas to be designated will be consistent with the laws, regulations, and policies governing the management of National Forest System lands. Specifically, this includes the Forest Service's 2005 Motorized Travel Management Rule (36 CFR 212); the 2001 Off-Highway Vehicle Record of Decision and Plan Amendment for Montana, North Dakota, and Portions of South Dakota; the subsequent Forest Plan Amendment Number 39; and the Custer National Forest and National Grasslands Land and Resource Management Plan.

The Chief of the Forest Service, in response to public comments on the 2005 Motorized Travel Rule, established timeframes for completing the route designation process nationally, including completing the District route designation by the end of September 2009.

Proposed Action. The proposed action is to designate roads, trails, and areas open to public motorized use, designate dispersed vehicle camping, and identify routes necessary for administrative use on the District (NFS lands). The route, trail, and area designations will also set specific seasons of use, where appropriate, and specify the type of vehicle use (*e.g.*, highway legal vehicle, ATVs). The Forest Service will produce a Motor Vehicle Use Map (MVUM) depicting those routes which are open to the general public for motorized use.

No Action Alternative. The No Action alternative would be to designate the current District system motorized roads for public motorized use, but would not address existing unauthorized (*i.e.,* non-system) routes or the lack of legal public right-of-way access for roads that cross private lands. A National Environmental Policy Act (NEPA) decision is not

required to designate roads, trails, and areas for public motorized use that are currently part of the National Forest System of roads, trails and areas. Alternatives to the Proposed Action and No Action will depict differing combinations of routes to remain open to motorized travel.

A consequence of the no action alternative is that the existing non-system routes currently being used would not be available for public motorized use. Decommissioning or obliterating these routes, which may involve ground disturbing activities, is not a part of the Proposed Action or alternatives, and would generally require separate and site-specific NEPA decisions regarding the implementation aspects of road closures. The environmental consequences of having routes closed to motorized travel will be evaluated in this environmental analysis.

Identification of new routes that would meet the goals and objectives for a motorized transportation system on NFS lands will not be a part of this travel management planning effort, but may be identified as an opportunity and would require separate, site-specific NEPA decisions to implement ground disturbing activities associated with new route construction.

Responsible Official: The Responsible Official is Steve E. Williams, Forest Supervisor, Custer National Forest, 1310 Main Street, Billings, MT 59105.

Nature of Decisions To Be Made: Based on the purpose and need for the proposed action, the Forest Supervisor will evaluate the Proposed Action and other alternatives in order to make the following decisions for the specific National Forest System lands:

- Determine any non-system routes that should be converted to system roads or trails;
- Determine the roads, trails, and areas that should be designated for public motorized travel; and,
- Determine the season and/or type of use for those routes open to public motorized travel; and,
- Determine if change in the extent and nature of dispersed vehicle camping change is warranted.

Scoping Process: Public scoping was initiated October 22, 2007 and was concluded November 27, 2007. Public meetings were held in Camp Crook and Buffalo, South Dakota, and Ekalaka, Montana in November 2007 to discuss the scoping document. The Forest Service received just over 20 letters, personal comments, or phone calls.

The Forest Service has considered all public scoping comments and concerns that have been submitted, as well as resource related input from the interdisciplinary team and other agency resource specialists. This input will be used to identify issues to consider in the environmental analysis. A comprehensive list of key issues will be determined before the full range of alternatives is developed and the environmental analysis is begun.

Persons and organizations commenting during the initial scoping will remain on the mailing list for future information about Sioux Ranger District Travel Management Planning.

The Responsible Official has determined that an Environmental Impact Statement is the appropriate NEPA document for this analysis.

Comments Requested: Given that scoping has been conducted and that public meetings have been conducted, comments are not being requested at this time.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for public comment. The comment period on the draft environmental impact statement will be 45 days from the date that the Environmental Protection Agency (EPA) publishes the notice of availability in the **Federal Register**.

Written comments are preferred and should include the name and address of the commenter. Comments submitted for this proposed action will be considered part of the public record.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Reviewers of draft environmental impact statements must structure their participation in the review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 US. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 409 F. Supp. 1334, 1338 (ED. Wis. 1980)). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternative formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 29, 2008.

Steve E. Williams,

Forest Supervisor.

[FR Doc. E8–20588 Filed 9–4–08; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Correction of Notice To Clarify Scope of Procurement List Additions; 2008 Commodities Procurement List

This Committee is correcting the notice of products that moved from its C-List to B-List.

In the notice appearing on page 50930–50931 on August 29, 2008 (Volume 73, Number 169), the Committee published products that are C-List products incorrectly as products that are moving from the C-List to the B-List.

The products that have moved from the C-List to the B-List are:

SKILCRAFT 18″ Blue Wet Mop 7920–01–565–4597.
SKILCRAFT 24″ Blue Wet Mop 7920–01–565–4596.
SKILCRAFT 18″ Yellow Dust Mop 7920–01–565–4598.
SKILCRAFT 24″ Yellow Dust Mop 7920–01–565–4599.
SKILCRAFT Flat Mop Handle with Frame 18″ 7920–01–565–4595.
SKILCRAFT Flat Mop Handle with Frame 24″ 7920–01–565–4600.

The URL for accessing the A-List is corrected as follows: *http://www.jwod.gov/jwod/p_and_s/A-List_08.html*.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8–20610 Filed 9–4–08; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List product(s) and/or service(s) to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete product(s) and/or service(s) previously furnished by such agencies.

Comments Must be Received on or Before: October 5, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the product(s) and/or service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and/or service(s) to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product(s) and/or service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product(s) and/or service(s) proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial and Landscaping, FBI Building, Houston, Texas, 1 Justice Park, Houston, TX.
NPA: On Our Own Services, Inc., Houston, TX.
Contracting Activity: General Services Administration, Public Buildings Service, Fort Worth, TX.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Hose Assembly, Nonmetallic

NSN: 4210–00–892–5494—Hose Assembly, Nonmetallic.
NPA: The Oklahoma League for the Blind, Oklahoma City, OK.
Contracting Activity: GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX.

Label, Pressure-Sensitive Adhesive

NSN: 7530–00–054–1575—Label, Pressure-Sensitive Adhesive.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: GSA/FSS OFC Sup Ctr.—Paper Products, New York, NY.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8–20609 Filed 9–4–08; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of briefing and meeting.

DATE AND TIME: Friday, September 12, 2008; 9:30 a.m.

PLACE: 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

Briefing Agenda

Topic: Encouraging Minority Students To Pursue Careers in Science, Technology, Engineering and Math

I. Introductory Remarks by Chairman

II. Speakers' Presentations

III. Questions by Commissioners and Staff Director

IV. Adjourn Briefing

Meeting Agenda

I. Approval of Agenda

II. Approval of Minutes

- July 11, 2008 Meeting
- August 19, 2008 Meeting
- September 6, 2008 Meeting

III. Announcements

IV. Staff Director's Report

V. Program Planning

- FY 2008 Statutory Report: Enforcing Prohibitions of Religious Discrimination in Prison
- FY 2009 Briefing Topics
- FY 2009 Statutory Report

VI. Future Agenda Items

VII. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8582.

Dated: September 3, 2008.

David Blackwood,

General Counsel.

[FR Doc. E8–20740 Filed 9–3–08; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–930]

Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 5, 2008.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that circular welded austenitic stainless pressure pipe (CWASPP) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated dumping margins are shown in the ''Preliminary Determination'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–3518 or 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2008, the Department received a petition concerning imports of CWASPP from the PRC filed in proper form by Bristol Metals, L.P., Felker Brothers Corp., Marcegaglia USA, Inc., Outokumpu Stainless Pipe Inc., and the United Steel Workers of America (collectively, petitioners). The Department initiated an antidumping duty investigation of CWASPP from the PRC on February 19, 2008. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221 (February 26, 2008) (*Initiation Notice*).

On February 20, 2008, the Department requested quantity and value (Q&V) information from the 11 companies that are identified in the petition as potential producers or exporters of CWASPP from the PRC. *See* Exhibit I–6, Volume I, of the January 30, 2008, Petition for the Imposition of Antidumping and Countervailing Duties (the petition). The Department received timely responses to its Q&V questionnaire from the following companies: Zhejiang Jiuli Hi–Tech Metals Co., Ltd. (Jiuli), Winner Stainless Steel Tube Co., Ltd. and Winner Machinery Enterprise Co., Ltd (collectively Winner). The other nine companies to which the Department sent Q&V questionnaires received the questionnaires but did not respond to them.

On March 14, 2008, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of CWASPP from the PRC. *See Welded Stainless Steel Pressure Pipe From China, Investigation Nos. 701–TA–454 and 731–TA–1144 (Preliminary)*, 73 FR 16911 (March 31, 2008). Also, in March 2008, petitioners and Winner submitted comments to the Department regarding the physical characteristics of subject merchandise that should be used in comparing sales prices with normal value.

On April 28, 2008, the Department received separate–rate applications from Jiuli and Winner. On April 15, 2008, the Department selected Winner as a mandatory respondent and issued an antidumping questionnaire to the company. *See* memorandum regarding ''Selection of Respondents in the Antidumping Investigation of Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China,'' dated April 15, 2008 (Respondent Selection Memorandum). Winner submitted timely responses to the Department's questionnaire on May 13, 2008, and June 3, 2008.

The Department issued supplemental questionnaires to, and received responses from Winner and Jiuli from April through August 2008. Petitioners submitted comments to the Department regarding Winner's questionnaire and supplemental questionnaire responses from June through July 2008.

On June 2, 2008, the Department released a memorandum to interested parties which listed potential surrogate countries and invited interested parties to comment on surrogate country and surrogate value selection. During June and July 2008, petitioners and Winner submitted comments on the appropriate surrogate country and surrogate values. The submitted surrogate value data are from India, Thailand, the United States, and international websites.

On June 10, 2008, petitioners requested postponement of the preliminary determination. On June 24, 2008, the Department extended this preliminary determination by fifty days. *See Notice of Postponement of Preliminary Determination in the Antidumping Duty Investigation of Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China*, 73 FR 35658 (June 24, 2008).

On August 15, 2008, Winner requested that the Department extend the final determination in this case. On August 20, 2008, Winner clarified and supplemented its extension request by identifying the length of the requested extension and by including a request to extend the provisional measures to six months. *See* the ''Postponement of Final Determination and Extension of Provisional Measures'' section of this notice below.

Period of Investigation

The period of investigation (POI) is July 1, 2007, through December 31, 2007. This period comprises the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed (*i.e.*, January 2008). *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials (''ASTM'') A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. ASTM A–358 products are only included when they are produced to meet ASTM A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A–554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A–249, ASTM A–688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A–269, ASTM A–270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005; 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (''HTSUS''). They may also enter under HTSUS subheadings 7306.40.1010; 7306.40.1015; 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes

only, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice*. The Department received comments concerning the scope of the CWASPP antidumping and countervailing duty investigations from Prudential Stainless & Alloy LP (Prudential), a U.S. importer and distributor of subject merchandise, on March 10, 2008, and rebuttal comments from petitioners on March 14, 2008. In addition, Prudential responded to petitioners rebuttal comments on April 28, 2008. Prudential requests that the Department limit the scope of the investigations by excluding from the scope all grades of ASTM A–312, except the 304 and 316 series, and all Schedules (wall thickness) of stainless pressure pipe except Schedules 40S and 10S. Prudential contends that the grades of pipe that they seek to exclude from the scope are premium–priced, low–volume, specialty grades that do not compete with high–volume commodity products in the 304 and 316 series. Moreover, Prudential contends that the Schedules that they seek to exclude from the scope constitute a minority of what is produced by the domestic industry and thus these Schedules do not represent a threat to petitioners. Petitioners urge the Department not to modify the scope, noting that (1) the current scope is an accurate reflection of the products for which the domestic industry is seeking relief, (2) the proposed change to the scope would exclude products that are both manufactured by, and important to, the domestic industry and (3) the products that Prudential seeks to exclude were defined by the ITC as like–products in its preliminary investigation questionnaire. In rebuttal, Prudential adds that although some of the domestic industry does produce the products that it requests to be excluded from the scope (''the products at issue''), these products are not important to the domestic industry. Prudential asks the Department to determine whether or not the products at issue are important to the domestic industry by calculating the percentage of U.S. production of the merchandise under investigation represented by the products at issue.

After considering parties' comments, the Department has decided not to modify the scope of the investigations. The starting point for determining whether merchandise is subject to an investigation is the petition. See *19 CFR 351.225(k)(1) (2001). See also Eckstrom Industries, Inc. v. United States, 254 F.3d 1068, 1071–72 (Fed. Cir. 2001)* (citing *Smith Corona Corp. v. United States, 915 F.2d 683, 685 (Fed. Cir. 1990)*). While the Department does have the authority to define or clarify the scope of an investigation, the Department ''must exercise this authority in a manner which reflects the intent of the petition and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the petition.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products From Canada*, 67 FR 15539 (April 2, 2002) and accompanying Issues and Decision Memorandum under Scope Issues (after Comment 49). Thus, ''absent an overarching reason to modify the scope in the petition, the Department accepts it.'' *See id*. The description of subject merchandise in the petition indicates that the products at issue are to be covered by the antidumping and countervailing investigations of CWASPP from the PRC. Additionally, in their comments, petitioners have confirmed that the scope, as currently written, is an accurate reflection of the products for which they seek relief. Therefore, the scope modifications proposed by Prudential are inconsistent with the intent of the petition and ''would thwart the statutory mandate to provide the relief requested in the petition.'' *See id*. Furthermore, Prudential's claims that the products at issue are ''small–volume'' products that are unimportant to the domestic industry do not provide a basis for modifying the scope. For the above reasons, the Department has not modified the scope.

Non–Market Economy Treatment

The Department considers the PRC to be a non–market economy (NME) country. In accordance with section 771(18)(c)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof (TRBs), Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *TRBs, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). The Department has not revoked the PRC's status as an NME country. Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Selection of a Surrogate Country

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base normal value (NV) on the value of the NME producer's factors of production. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of merchandise comparable to the subject merchandise. The Department has determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries that are at a level of economic development comparable to that of the PRC. *See* memorandum regarding ''Antidumping Duty Investigation of Circular Welded Austenitic Stainless Pressure Pipe (''C–WASP) Pipe'') from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated May 22, 2008 (Policy Memorandum).

As noted above, during June and July 2008, petitioners and Winner submitted comments on the appropriate surrogate country and surrogate values. Petitioners argue that India is the most appropriate surrogate country because (1) it is a market economy (ME) country at a level of economic development comparable to the PRC in terms of gross national income (GNI), (2) it is a significant producer of subject merchandise for which public financial statements are available, (3) it maintains public data for many of the factors of production, and (4) the Department has traditionally selected India as a surrogate country for the PRC. Petitioners add that Thai surrogate values are less appropriate than Indian values because the financial statements provided by Winner are not from producers of subject merchandise.

Winner argues that Thailand, rather than India, should be selected as the surrogate country. Specifically, Winner contends that Thailand is the

appropriate surrogate country in this case because: (1) it is an ME country that is economically comparable to the PRC, (2) it is a significant producer of subject merchandise (the ITC identified Thailand (not India) as one of four substantial suppliers of CWASPP to the United States), and (3) Thai CWASPP is more comparable to the PRC's than India's CWASPP because, based on ITC data, U.S. importers did not purchase Indian CWASPP. Moreover, Winner maintains that India and Thailand should not be considered to be equally comparable to the PRC because Thailand's per capita GNI is closer to the PRC's than India's and the difference between Thailand's GNI and India's GNI is vast. In addition, Winner argues that the Department should not have listed India as a potential surrogate country because, in doing so, the Department skipped over nineteen other countries each with a GNI closer to that of the PRC. Winner also notes that predictability is not a basis for selecting India as the surrogate country; rather it is the Department's obligation to use the best' available information to calculate dumping margins as accurately as possible. Lastly, Winner claims India should not be selected as a surrogate country because studies indicate its import statistics are flawed due to misclassifications and thus they should not be used to calculate surrogate values.

After evaluating interested parties' comments, the Department has selected India as the surrogate country for this investigation. Although Winner has argued that Thailand's level of economic development is closer to that of the PRC than India's, the statute does not require the Department to use a surrogate country at a level of economic development closest to the NME country; it merely requires that the surrogate country used be economically comparable to the NME country. *See* section 773 (c)(2) of the Act. Thus, the Department does not rank–order countries' comparability according to how close their per capita GNI is to that of the NME country in question. Rather, in NME proceedings, the Department creates a list of possible surrogate countries that it considers equivalent in terms of economic comparability. In addition, the potential surrogate countries identified reflect countries that, in the Department's experience, are most likely to offer data necessary to conduct the proceeding. Given the foregoing, and the spectrum of economic development across the world, (*e.g.*, the World Development Report used by the Department to select potential surrogate countries list 133 countries with GNIs ranging from $100 to $66,530), we continue to find it appropriate to consider India to be at a level of economic development comparable to the PRC. *See* Winner's June 27, 2008, submission to the Department at Exhibit 2.

With respect to the criterion that the surrogate country be a significant producer of merchandise that is comparable to subject merchandise, record evidence indicates that both India and Thailand are significant producers of comparable merchandise. *See* memorandum from Melissa Blackledge, to the File regarding ''Potential Surrogate Countries: Significant Production of Comparable Merchandise'' dated concurrently with this notice.

Since both India and Thailand satisfy the statutory criteria for selecting a surrogate country, we examined whether one country is a more appropriate surrogate than the other based on data availability and quality. After examining the surrogate value information provided by the petitioners and Winner, we find the Indian surrogate financial data better reflect the overall experience of producers of subject merchandise in a surrogate country. The Indian financial statements from Jindal SAW Ltd. and Ratnamani Metals & Tubes Ltd. are from companies that produce subject and like merchandise, and while one is contemporaneous with the POI, the other includes the year ending March 31, 2007, just three months prior to the beginning of the POI. The only usable Thai financial statement, for Great Central (International) Co., Ltd., is not contemporaneous with the POI and states that it ''manufactures and distributes stainless steel,'' yet it lacks information regarding the type of stainless steel produced, the type and extent of manufacturing, the raw materials produced and/or consumed, and its associations with other companies or group of companies. Generally, where available, we prefer to use more than one financial statement in order to obtain a broader industry representation.[1]

While petitioners and Winner have submitted financial statements in addition to those identified above, we have concluded that these financial statements are not useable. Specifically, the financial statements the Department finds not useable are: (1) two Thai financial statements, one from Thai–German Products Public Co., Ltd. and one from Lokahit Metal Public Co., Ltd., which indicate receipt of subsidies, and (2) one Indian financial statement, from Suraj Stainless Ltd., which also indicates receipt of subsidies.

In *Crawfish from the PRC*, the Department discussed its practice with respect to financial statements that contain evidence of subsidization:

> {T}he statute directs Commerce to base the valuation of the factors of production on ''the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate . . . .'' Section 773(c)(1) of the Act. Moreover, in valuing such factors, Congress further directed Commerce to ''avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.'' Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100 nth Cong., 2 nd Sess., at 590–91 (1988). The Department calculates the financial ratios based on financial statements of companies producing comparable merchandise from the surrogate country, some of which may contain evidence of subsidization. However, where the Department has a reason to believe or suspect that the company may have received subsidies, the Department may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of that company or the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. Consequently, {those statements that appear to reflect subsidies} do not constitute the best available information to value the surrogate financial ratios. [2]

Given the record information regarding these three companies' receipt of subsidies, and the fact that we have other acceptable financial statements to use as surrogates,[3] we have not considered the financial data from these three companies in our surrogate ratio calculations.

[1] *See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 5.

[2] *See Crawfish from the PRC*, and accompanying Issues and Decision Memorandum at Comment 1.

[3] As noted above, those financial statements include statements from Jindal SAW Ltd. Although Winner noted that Jindal SAW Ltd.'s financial statement listed ''export benefits/government grants receivable,'' the Department has insufficient information to determine whether these items relate to programs that have been countervailed.

Petitioners and Winner also submitted import statistics from which they calculated surrogate values. Although Winner has contested the quality of the Indian import data based on certain studies, the studies submitted by Winner do not reference the inputs used to produce CWASPP. In *Wooden Bedroom Furniture from the PRC*, the Department examined these studies and found they were not sufficiently specific to the inputs used in that case to support finding the Indian import data to be inaccurate.[4] Likewise, the evidence that has been placed on the record of this proceeding by Winner does not cause the Department to question the quality of the Indian import statistics used here. Therefore, because India better represents the experience of producers of subject merchandise and provides better financial data; we have selected India as the surrogate country.

Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate–rate status in NME investigations. *See Initiation Notice*, 73 FR at 10221. The process requires exporters and producers to submit a separate–rate status application. *See also Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries*, (April 5, 2005), (''*Policy Bulletin 05.1*'') available at *http://ia.ita.doc.gov*.[5] However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

A. Separate Rate Applicants[6]

1. Wholly Foreign–Owned

Winner, the mandatory respondent, reported that it is wholly owned by individuals or companies located in a market economy in its separate–rate application (''Foreign–owned SR Applicant''). Therefore, because it is wholly foreign–owned, and we have no evidence indicating that it is under the control of the PRC, further separate rates analysis is not necessary to determine whether this company is independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104–05 (December 20, 1999) (where the respondent was wholly foreign–owned and, thus, qualified for a separate rate). Accordingly, we have preliminarily granted a separate rate to Winner Machinery Enterprise Company Limited.

2. Wholly Chinese–Owned

One separate rate applicant, Jiuli, stated that it is a wholly Chinese–owned company. Therefore, the Department must analyze whether this respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by Jiuli supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) an absence of restrictive stipulations associated with the exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the company; and (3) and there are formal measures by the government decentralizing control of the company. *See* Jiuli's Separate Rate Application, (Jiuli's SRA) dated April 28, 2008.

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

[4] *See* Amended *Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture from the People's Republic of China*, 72 FR 46957 (August 22, 2007) and accompanying Issues and Decision Memorandum, dated August 8, 2007, at Comment 1.

[5] *Policy Bulletin 05.1* states: ''while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.'' *See Policy Bulletin 05.1* at 6.

[6] All separate rate applicants receiving a separate rate are hereby referred to collectively as the ''SR Recipients.''

We determine that the evidence on the record supports a preliminary finding of de facto absence of governmental control with respect to Jiuli based on record statements and supporting documentation showing that the company: 1) sets its own export prices independent of the government and without the approval of a government authority; 2) retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) has the authority to negotiate and sign contracts and other agreements; and 4) has autonomy from the government regarding the selection of management. See, *e.g.*, Jiuli's SRA.

The evidence placed on the record of this investigation by Winner and Jiuli demonstrates an absence of *de jure* and *de facto* government control with respect to the exporters' exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we have preliminary granted Winner and Jiuli separate rate status. We calculated a company–specific dumping margin for Winner and also assigned this margin to Jiuli.

The PRC–Wide Entity

Although PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.[7] Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports of subject merchandise from the PRC made during the POI. We have treated the non–responsive PRC producers/exporters as part of the PRC–wide entity because they did not qualify for a separate rate.

Section 776(a)(2) of the Act provides that the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified.

As noted above, the PRC–wide entity withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC–wide dumping margin on facts available. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); *see also Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act , H.R. Rep. No. 103–316, Vol. I at 843 (1994) (*SAA*), reprinted in 1994 U.S.C.C.A.N. 4040 at 870. Because the PRC–wide entity did not respond to the Department's request for information, the Department has concluded that the PRC–wide entity has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available (AFA): (1) information derived from the petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of: (a) the highest margin alleged in the petition or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decisions Memorandum at Facts Available. Here, we assigned the PRC–wide entity the dumping margin calculated for Winner, which exceeds the highest margin alleged in the petition and is the highest rate calculated in this investigation. Pursuant to section 776(c) of the Act, we do not need to corroborate this rate because it is based on information obtained during the course of this investigation rather than secondary information. *See SAA* at 870. The dumping margin for the PRC–wide entity applies to all entries of the merchandise under investigation except for entries of subject merchandise produced and exported by Winner and produced and exported by Jiuli.

Fair Value Comparisons

To determine whether Winner sold CWASPP to the United States at LTFV, we compared the weighted–average export price (EP) of the CWASPP to the NV of the CWASPP, as described in the ''U.S. Price,'' and ''NV'' sections of this notice.

U.S. Price

EP

In accordance with section 772(a) of the Act, we based the U.S. price of sales on EP because the first sale to unaffiliated purchasers was made prior to importation and the use of constructed export price methodology was not otherwise warranted.

In accordance with section 772(c) of the Act, we calculated EP by deducting, where applicable, the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign movement expenses, marine insurance, international freight, and foreign brokerage and handling expenses.

We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi (RMB). Where market economy service providers, who were paid in a market economy currency, provided movement services for over 33 percent of subject merchandise shipments, by volume, we based the movement expenses on the actual price charged by the service provider. *See Antidumping Methodologies: Market*

[7] The Department received only two timely responses to the requests for Q&V information that it sent to 11 potential exporters identified in the petition. The record indicates the questionnaires were received by the exporters. *See* Respondent Selection Memorandum.

Economy Inputs, Expected Non–Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006); *see also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997) (*Final Rule*). For details regarding our EP calculation, *see* Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China – Preliminary Analysis Memorandum for Winner Machinery Enterprise Co., Ltd.

NV

In accordance with section 773(c) of the Act, we constructed NV from the factors of production employed by Winner to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the value of the factors of production, general expenses, profit, and packing costs. We valued the factors of production using prices and financial statements from the surrogate country, India. If market economy suppliers, who were paid in a market economy currency, supplied over 33 percent of the total volume of a material input purchased from all sources during the POI, we based the input value on the actual price charged by the supplier. If market economy suppliers, who were paid in a market economy currency, supplied less than 33 percent of the total volume of a material input purchased from all sources during the POI, we calculated the value by weight–averaging surrogate values with the actual price charged by the suppliers. *See Antidumping Methodologies: Market Economy Inputs, Expected Non–Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006); *see also Final Rule*. In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing values which are non–export average values, contemporaneous with, or closest in time to, the POI, product–specific, and tax–exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values.

We valued material inputs and packing by multiplying the amount of the factor consumed in producing subject merchandise by the average unit value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407 (Fed. Cir. 1997). Where we could only obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using the Indian Wholesale Price Index (WPI) as published in the International Financial Statistics of the International Monetary Fund.

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, South Korea, and Thailand because in other proceedings the Department found that these countries maintain broadly available, non–industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 11670 (March 15, 2002); *see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004).[8] Thus, we have not used prices from these countries in calculating the Indian import–based surrogate values.

We valued raw materials and packing materials using Indian import statistics, except as noted below. Winner reported both ME and NME purchases of grades 304 and 316 stainless steel coil (coil) used to produce the merchandise under investigation. Petitioners argue that Winner purchased coil at dumped and subsidized prices. Specifically, they argue that the Department should not use Winner's ME purchase price to value coil because: (1) the Department has a dumping order on U.S. imports of coil from Taiwan, and Winner's coil supplier has received an adverse facts available (AFA) dumping margin in the proceeding; (2) the European Union (EU) initiated a dumping investigation on stainless steel cold rolled flat products from Taiwan which covers the period during which the respondent purchased coil from its supplier; (3) the European Community (EC) imposed countervailing duties (CVD) on Taiwanese hot–rolled flat steel coils, (specifically, petitioners argue that the CVD programs existed during the instant POI, and, although Winner's coil supplier was not examined in the EC's CVD investigation, it is reasonable to believe that this supplier could have benefitted from these programs since the programs are broadly available, non–industry specific, and were likely used by steel producers); (4) Winner's ME purchase prices are well below the prices of 304 and 316 stainless steel coil from the Steel Authority of India Limited (SAIL), prices reported by the publication *American Metal Market* (*AMM*), and prices quoted on metalprices.com; and (5) Winner's ME purchase prices are below the estimated cost of producing grades 304 and 316 stainless steel, even where one conservatively treats alloys as the only material input used to produce the stainless steel (petitioners constructed the cost of grades 304 and 316 stainless steel using market prices for alloys and Indian surrogate overhead and profit ratios).

Winner counters that its ME purchases of grades 304 and 316 coil (which constitute over 33% of its total purchases of coil) have not been dumped or subsidized and should be used to value the coils that it consumed. Specifically, Winner argues that: (1) in the latest review in the U.S. antidumping proceeding cited by petitioners, another company, not its coil supplier, received the AFA dumping margin, while the review of Winner's supplier covering the instant POI was rescinded; (2) the EU has made no determination in its dumping investigation; (3) evidence of third–country (EC and US) dumping is irrelevant; (4) there is no evidence that Winner's coil supplier received subsidies or that there are subsidies available for coil, (5) the EC CVD order is outdated (2000), expired in 2005, does not cover *stainless* coil (only hot–rolled coil), and does not name Winner's coil supplier, and (6) petitioners' price and cost comparisons are unreliable because: (a) Indian SAIL

[8] In addition, we note that legislative history explains that the Department is not required to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100-576 at 590 (1988). As such, it is the Department's practice to base its decision on information that is available to it at the time it makes its determination.

price quotes do not indicate the seller or buyer, are not certified by anyone, and do not include discounts, rebates, *etc.*, (b) *AMM* prices are U.S.-specific representing industry averages and do not reasonably reflect Taiwanese stainless prices, and (c) petitioners' calculation of the cost used in their comparison is inaccurate. Lastly, Winner claims that Asia MEPS (International) Ltd. (MEPS) data corroborates Winner's coil supplier's coil prices (petitioners identified MEPS as a leading source of pricing data in the stainless steel industry.)

Petitioners then argue that import statistics, regardless of the selected surrogate country, should not be used to value coil because they do not differentiate between basic coil and grades 304 and 316 coil. Petitioners claim that differentiating between other grades of coil and grades 304 and 316 coil is critical because grades 304 and 316 coil contain high concentrations of expensive alloys, such as nickel and molybdenum, and cost several times more than basic coil. Specifically, petitioners contend that the average unit values from Indian import data for the HTS classification for coil, for example, do not approach the cost of the nickel and molybdenum contained in grades 304 and 316 coils, and therefore, the Department should use SAIL prices as the surrogate value for 304 and 316 coil.[9]

The Department finds no evidence that Winner's ME purchases were dumped or subsidized because: (1) neither the U.S. AD order on coil from Taiwan nor the EU investigation have relevance to the prices paid in the PRC,[10] (2) the countervailing duty proceeding conducted by the EC (a) does not cover merchandise produced by the Taiwanese coil supplier, (b) does not cover stainless coil, (c) does not name the Taiwanese coil supplier as a respondent, and (d) expired in 2005, and (3) there is no evidence on the record that any of the subsidies on hot rolled steel found by the EC to be countervailable still exist or, even if they exist, that the Taiwanese coil supplier would be eligible to receive them. Moreover, although Winner's ME purchase prices for stainless coil are lower than the prices and constructed costs submitted by petitioners, prices can be affected by numerous indeterminate factors. Thus, these price differences do not provide a basis to believe or suspect that the product may be dumped or subsidized. Therefore, because the quantity of ME purchases of coil exceeded 33% of Winner's total purchases of coil, the Department has used the ME purchase price as its surrogate value for all purchases of coil.

We valued water using data from the Maharashtra Industrial Development Corporation (www.midcindia.org) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003, 193 for the ''inside industrial areas'' usage category, and 193 for the ''outside industrial areas'' usage category. Because the rate was not contemporaneous with the POI, we inflated the rate using the WPI. *See* the Memorandum Regarding ''Investigation of Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Surrogate Values Selected'' for Winner dated concurrently with this notice (Factor Value Memorandum).

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country–wide, publicly–available information on tax–exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Factor Value Memorandum.

We valued natural gas using a value obtained from the Gas Authority of India Ltd.'s website, a supplier of natural gas in India. *See http://www.gailonline.com/gailnewsite/index.html*. The value relates to the period January through June 2002. Therefore, we inflated the value using the WPI. In addition, we added transportation charges to the value. *See* Surrogate Value Memorandum and *Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 27991 (May 15, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

We valued fuel oil/diesel using the prices for petrol from Indian Oil Corp. Ltd. from June 2007, after inflating the value using the WPI for the POI. *See* Factor Value Memorandum.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the most recently calculated regression–based wage rate, which relies on 2005 data. This wage rate can be found on the Department's website on Import Administration's home page. *See* Expected Wages of Selected NME Countries (revised May 2008) (available at http://ia.ita.doc.gov/wages/index.html). The source of these wage rate data on the Import Administration's web site is the International Labour Organization, Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. Since this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by Winner. *See* Factor Value Memorandum.

We valued truck freight expenses using a per–unit average rate calculated from data on the following web site: http://www.infobanc.com/logistics/logtruck.htm. The logistics section of this website contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POI, we deflated the rate using the WPI. *See* Factor Value Memorandum.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India, Kejirwal Paper Ltd. in the LTFV investigation of certain lined paper products from India, and Essar Steel in the antidumping duty administrative review of hot–rolled carbon steel flat products from India. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012

[9] Although not mentioned by petitioners, we noted that SAIL is specifically named in the EC CVD order on hot-rolled steel.

[10] The Department has previously noted that it will ''disregard market economy prices for imported inputs as dumped only when the importing country has an antidumping duty order in effect for the products in question * * * dumping is specific to competitive conditions in particular markets and cannot be assumed to apply globally.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts From the People's Republic of China*, 68 FR 20373 (April 25, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

(August 8, 2006) and *Certain hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018,2021 (January 12, 2006) (unchanged in *Certain Hot–Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Administrative Review*, 71 FR 40694 (July 18, 2006). Since the resulting value is not contemporaneous with the POI, we inflated the rate using the WPI. *See* Factor Value Memorandum. We valued international freight and marine insurance using purchase prices. *See* analysis memorandum for Winner dated concurrently with this notice.

We valued factory overhead, selling, general, and administrative (SG&A) expenses, and profit, using the 2006–2007 audited financial statements of Jindal SAW Ltd. and Ratnamani Metals & Tubes Ltd. *See* Factor Value Memorandum. For additional information regarding the selection of financial ratios, see the ''Surrogate Country'' section above.

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information with which to value factors of production in the final determination within 40 days after the date of publication of the preliminary determination.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*. This change in practice is described in *Policy Bulletin 05.1*, available at http://ia.ita.doc.gov/. *Policy Bulletin 05.1*, states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin 05.1, ''Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non–Market Economy Countries.''

Preliminary Determination

The weighted–average dumping margins are as follows:

Exporter & Producer	Weighted–Average Margin
ZHEJIANG JIULI HI–TECH METALS CO., LTD. Produced by: Zhejiang Jiuli Hi–Tech Metals Co., Ltd.	22.03%
WINNER MACHINERY ENTERPRISE CO., LTD. Produced by: Winner Stainless Steel Tube Co., Ltd.	22.03%
PRC–WIDE RATE	22.03%

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of CWASPP from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds U.S. price, as indicated above.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of CWASPP, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs. *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties that wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on August 15, 2008, as amended on August 22, 2008, Winner requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Winner agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4–month period to a 6–month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: August 27, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8–20508 Filed 9–4–08 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK22

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Council's Squid, Mackerel, and Butterfish Committee will hold a public meeting on Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan and if time allows, also on Amendment 11.

DATES: The meeting will be held on Tuesday, September 23, 2008, from 10 a.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Sheraton Newark Airport Hotel, 128 Frontage Road, Newark, NJ 07114; telephone: (973) 690–5500.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION: The purposes of this meeting are: to finalize Amendment 10's butterfish rebuilding and bycatch reduction preferred alternatives; and, if time allows, review progress on Amendment 11 (especially, but not limited to, alternatives dealing with instituting limited access in the mackerel fishery).

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office, (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: September 2, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–20605 Filed 9–4–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK21

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, September 29 - October 7, 2008 at Sheraton Hotel, 401 East 6th Avenue, Anchorage, AK.

DATES: The Council will begin its plenary session at 8 a.m. on Wednesday, October 1 continuing through Tuesday October 7, 2008. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, September 29 and continue through Saturday October 4. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, September 29 and continue through Wednesday October 1, 2008. The Ecosystem Committee will meet Tuesday, September 30, from 9 a.m. to 5 p.m. The Enforcement Committee will meet Tuesday, September 30, from 1 p.m. to 5 p.m. in the. All meetings are open to the public, except executive sessions.

ADDRESSES: The meetings will be held at the Sheraton Hotel, 401 East 6th Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports

Executive Director's Report (including Joint Protocol Committee report)

NMFS Management Report (including update on halibut area 2C regulations; update on Community Development Quota oversight regulations, and annual Bering Sea and Aleutian Islands (BSAI) crab report.)

Alaska Department of Fish & Game Report

U.S. Coast Guard Report

U.S. Fish & Wildlife Service Report

Protected Species Report (including update on the BiOp schedule)

2. Halibut Management: Report from ADF&G on Charter halibut harvests; final action on Charter Halibut Catch Sharing Plan; Final action on Area 3A Guideline Harvest measures.

3. BSAI Crab Issues: Receive Plan Team report, approve Crab Stock Assessment Fishery Evaluation Report and adopt Overfishing Levels (OFLs); Final action on St. George Protection Measures; receive BSAI Crab Program 3-year review report; receive Crab Committee report/crew proposals; preliminary review of BSAI 90.10 Amendment package; receive report on Crab Economic Data report metadata;

discussion paper on BSAI crab regional delivery emergency relief.

4. Gulf of Alaska (GOA) Sideboards: Final action on GOA sideboards for BSAI crab vessels; Final action on GOA sideboards regarding GOA rockfish; Initial review amendment 80 Prohibited Species Catch.

5. BSAI Salmon Bycatch: Discussion paper on Chum Salmon Bycatch alternatives; review Pollock Intercooperative Agreement report.

6. Arctic Fishery Management Plan (FMP): receive report from Ecosystem Committee; Initial review of the Arctic FMP.

7. Research Priorities: Review and adopt 5-year research priorities.

8. Groundfish Catch Specifications: receive Plan Team reports; action on proposed groundfish harvest specifications.

9. Aleutian Islands Sideboards: discussion paper on sideboards for AI cod processing; discussion paper on sideboards for AI Pacific Ocean Perch/Atka mackerel processing.

10. Miscellaneous Groundfish Management: Committee report on comprehensive data collection (T); discussion paper on BSAI fixed gear parallel fisheries; discussion paper on Bering Sea bottom trawl sweep requirements; review update on Pacific cod area splits (Bering Sea and Aleutian Islands) and take action as necessary; discussion paper on Amendment 80 vessel replacement provisions(T).

11. Staff Tasking: Review Committees and tasking; receive report from Aleutian Island Ecosystem Team.

12. Other Business

The SSC agenda will include the following issues:

1. BSAI crab issues
2. Research Priorities
3. Groundfish specifications
4. GOA Sideboards
5. Groundfish issues
6. Arctic FMP
7. Review Salmon genetics sampling protocol/research grant

The Advisory Panel will address most of the same agenda issues as the Council, except for ι1 reports. The Agenda is subject to change, and the latest version will be posted at *http://www.fakr.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 2, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–20604 Filed 9–4–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Disposal and Reuse of Hunters Point Shipyard, San Francisco, California and To Announce a Public Scoping Meeting

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section (102)(2)(c)of the National Environmental Policy Act (NEPA) of 1969, and the regulations implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), the Department of the Navy (Navy) announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate the potential environmental consequences of the proposed disposal and reuse of the surplus portion of Hunters Point Shipyard, San Francisco, California.

DATES AND ADDRESSES: A public scoping meeting will be held on Tuesday, September 23, 2008, from 6 p.m. to 8 p.m. at the Southeast Community Facility, Alex L. Pitcher Community Room, 1800 Oakdale Avenue, San Francisco, California 94124. The purpose of the meeting will be to receive oral and written comments on environmental concerns that should be addressed in the SEIS.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick McCay, telephone: 619–532–0906; E-Mail: *patrick.mccay@navy.mil* or write to: Director, BRAC PMO West, ATTN: Mr. Patrick McCay, 1455 Frazee Road, Suite 900, San Diego, CA 92108.

SUPPLEMENTARY INFORMATION: The proposal being evaluated in the SEIS is the disposal and reuse of Hunters Point Shipyard, which encompasses approximately 860 acres (417 acres of dry land and 443 acres of submerged land) on a peninsula along San Francisco's southeastern waterfront between the City's Financial District and San Francisco International Airport. In 2004, Parcel A, approximately 76 acres, was transferred to the City of San Francisco and is not considered as part of the proposed federal action. The new proposed federal action is a change in reuse from, and represents an amendment to, the original proposed Hunters Point Redevelopment Plan, as addressed by the Navy in the ''Final EIS for the Disposal and Reuse of Hunters Point Shipyard'' (March 2000).

The Navy is the action proponent for the new proposal, which is also a component of the Bayview Waterfront Project being addressed in an Environmental Impact Report by the Redevelopment Agency of the City and County of San Francisco and the Planning Department of the City and County of San Francisco. The purpose of and need for the proposed action is to dispose of surplus federal property at Hunters Point Shipyard which was closed in accordance with the Defense Base Closure and Realignment for subsequent reuse.

For the SEIS, two alternatives will be considered as part of the disposal and reuse action: Stadium Plan Alternative and Non-Stadium Plan Alternative. The Stadium Plan Alternative includes a mixed-use community comprising 2,500 new residential units, 125,000 square feet of retail space, 2,000,000 square feet of research and development (R&D) space, 250 acres of parks and recreational open space, and civic and community uses. A major component would be a new, 69,000-seat National Football League stadium for the San Francisco 49ers.

The Non-Stadium Plan Alternative would not include the stadium for the San Francisco 49ers, but instead would provide 5,000,000 square feet of R&D space, in addition to the other components noted under the Stadium Plan Alternative for residential, retail, R&D, parks and recreation, and civic and community use space. Both action alternatives would be consistent with specifications of the Bayview Jobs, Parks and Housing Initiative (Proposition G), which was approved by San Francisco voters in June of 2008.

The SEIS will also consider a No Action Alternative.

Environmental issues areas to be addressed in the SEIS include: Transportation, traffic and circulation, air quality, noise, cultural resources,

hazards and hazardous materials, land use compatibility and policy conformity, geology and soils, hydrology and water quality, biological resources, public services, utilities, population and housing, visual resources, and energy.

The Navy will initiate a scoping process for the purpose of determining the extent of issues to be addressed, and identifying significant issues related to the disposal and reuse of Hunters Point Shipyard. This process will include a public scoping meeting as noted in the Dates and Addresses Section of this notice and which will be advertised in area newspapers.

Navy representatives will be available at the meeting to receive comments from the public regarding issues of concern. Federal, state, and local agencies, and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed during the preparation of the SEIS. Agencies and the public are also invited and encouraged to provide written comments on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commenter believes the SEIS should address.

Written comments must be postmarked no later than October 17, 2008, and mailed to: Director, BRAC PMO West, ATTN: Mr. Patrick McCay, 1455 Frazee Road, Suite 900, San Diego, California 92108; e-mail: *patrick.mccay@navy.mil;* Fax: 619–532–0940.

Dated: August 28, 2008.

T. M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–20592 Filed 9–4–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Open Meeting of the Board of Advisors (BOA) to The President, Naval Postgraduate School (NPS)

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of The Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Board of Advisors to the President, Naval Postgraduate School will be held. This meeting will be open to the public.

DATES: The meeting will be held on Tuesday, October 21, 2008, from 8 a.m. to 4 p.m. and on Wednesday, October 22, 2008, from 8 a.m. to 12 p.m. Eastern Time Zone.

ADDRESSES: The meeting will be held at the Office of Naval Research, 875 N. Randolph Street, Suite 1435, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Jaye Panza, Naval Postgraduate School, Monterey, CA, 93943–5001, telephone: 831–656–2514.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to elicit the advice of the Board on the Naval Service's Postgraduate Education Program and the collaborative exchange and partnership between NPS and the Air Force Institute of Technology (AFIT). The board examines the effectiveness with which the NPS is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the NPS as the board considers pertinent. Individuals without a DoD government/CAC card require an escort at the meeting location.

For access, information, or to send written comments regarding the NPS BOA contact Ms. Jaye Panza, Naval Postgraduate School, 1 University Circle, Monterey, CA 93943–5001 or by fax: 831–656–3145 by October 10, 2008.

Dated: August 28, 2008.

T. M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–20591 Filed 9–4–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Partially Closed Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Naval Research Advisory Committee (NRAC) will meet to brief the Assistant Secretary of the Navy; Research, Development and Acquisition (ASN (RD&A)) on the results of the committee's summer studies covering two topics: Undersea Maritime Domain Awareness (UMDA) and Disruptive Commercial Technologies (DCT). During the UMDA briefing, the committee will discuss classified information at the secret level from government organizations and proprietary information from commercial industry organizations.

Discussions will focus on the exploitation of physical vulnerabilities and the tactical applications of known and emerging technologies. The Executive Session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Wednesday, September 24, 2008, from 8:30 a.m. to 8:55 a.m. and from 10 a.m. to 11 a.m. The closed Executive Session on Wednesday, September 24, 2008, will be held from 9 a.m. to 9:45 a.m.

The open session of the meeting held on Thursday, September 25, 2008, will be from 8:30 a.m. to 8:55 a.m. and from 11 a.m. to 12:45 p.m. The closed Executive Session will be held on Thursday, September 25, 2008, from 9 a.m. to 10:45 a.m.

ADDRESSES: The briefing to the ASN (RD&A) will be held: September 24, 2008: Conference Room M4, The Pentagon, Washington, DC; September 25, 2008: Pentagon Auditorium, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Ellis, Jr., Program Director, Naval Research Advisory Committee, 875 North Randolph Street, Arlington, VA 22203–1955, telephone: 703–696–5775.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). Participants' registration, introduction/welcoming remarks and the Disruptive Commercial Technologies session on both Wednesday, September 24, 2008, and Thursday, September 25, 2008, are unclassified and are open to the public. Two sessions of the briefing will be devoted to Undersea Maritime Domain Awareness. Those two sessions will include discussions and technical examination of information related to undersea disruptive technologies to U.S. Navy and U.S. Marine Corps combat operations.

In addition, these sessions will discuss proprietary information as well as classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order and SECNAV Instructions M–5510.36 of June 2006. The proprietary, classified and non-classified matters to be

discussed during these two sessions are so inextricably intertwined as to preclude opening this session of the briefing.

In accordance with 5 U.S.C. App. section 10(d), the Secretary of the Navy has determined in writing that the UMDA sessions of the briefing will be closed to the public because they will discuss matters listed in 5 U.S.C. section 552b(c)(1), (4) and SECNAV Instructions M–5510.36 of June 2006.

Dated: August 29, 2008.

T. M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–20553 Filed 9–4–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Meeting of the Ocean Research and Resources Advisory Panel; Correction

AGENCY: Department of the Navy, DoD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** on August 26, 2008 at 73 FR 50312 concerning a meeting of the Ocean Research and Resources Advisory Panel. The document contained incorrect information.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, telephone: 703–696–4118.

Correction

In the **Federal Register** of August 26, 2008, in FR Doc. E8–19725, on page 50312, make the following changes:

1. In the first column, on page 50312, correct the **SUMMARY** section to read as follows:

''**SUMMARY:** The Ocean Research and Resources Advisory Panel (ORRAP) will meet to finalize the recommendations laid out in the ORRAP administration transition document. The meeting will be open to the public.''

2. In the first column, on page 50312, correct the **DATES** section to read as follows:

''**DATES:** The meeting will be held on Monday, October 6, 2008 from 11:30 a.m. to 1:30 p.m. Members of the public should submit their comments one week in advance of the meeting to the meeting point of contact.''

3. In the first column, on page 50312, correct the **ADDRESSES** section to read as follows:

''**ADDRESSES:** The meeting will be held in the offices of the Consortium of Ocean Leadership, 1201 New York Avenue NW., 4th Floor, Washington, DC.''

Dated: August 29, 2008.

T. M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–20590 Filed 9–4–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Partially Closed Meeting of the Secretary of the Navy Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The SECNAV Advisory Panel will discuss recommendations for the Department of the Navy's acquisition structure and strategies related to a classified topic.

DATES: The meeting will be held on September 25, 2008 from 8:30 a.m. to 4:30 p.m. The morning sessions on Acquisition Structure from 8:30 a.m. to 11:30 a.m. will be open. The afternoon sessions will be closed.

ADDRESSES: The meeting will be held at the Pentagon Conference Center across from the Corridor 8 entrance to the Pentagon. Public access is limited due to the Pentagon Security requirements. Members of the public wishing to attend will need to contact LCDR Cary Knox at 703–693–0463 or Colonel Simkins-Mullins at 703–697–9154 no later than September 19, 2008 and provide Name, Date of Birth and Social Security number. Public transportation is recommended as public parking is not available. Members of the public wishing to attend this event must enter through the Pentagon's Metro Entrance between 7:45 a.m. and 8:15 a.m. where they will need two forms of identification in order to receive a visitor's badge and meet their escort. Members will then be escorted to the Pentagon Conference Center to attend the open sessions of the Advisory Panel. Members of the public shall remain with designated escorts at all times while on the Pentagon Reservation. Members of the public will be escorted back to the Pentagon Metro Entrance at 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Colonel Caroline Simkins-Mullins, SECNAV Advisory Panel, Office of Program and Process Assessment, 1000 Navy Pentagon, Washington, DC 20350, telephone: 703–697–9154.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), these matters of the afternoon sessions constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that portions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

Individuals or interested groups may submit written statements for consideration by the Secretary of the Navy Advisory Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below. If the written statement is in response to the agenda mentioned in this meeting notice, then the statement, if it is to be considered by the Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the Secretary of the Navy Advisory Panel Chairperson, and ensure they are provided to members of the Secretary of the Navy Advisory Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to: Designated Federal Officer, SECNAV Advisory Panel, Office of Program and Process Assessment, 1000 Navy Pentagon, Washington, DC 20350, Telephone: 703–697–9154.

Dated: August 28, 2008.

T. M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–20554 Filed 9–4–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on September 17, 2008, at the headquarters of the IEA in Paris, France, in connection with a

joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market which is scheduled to be held at the same location and time, and on September 18 in connection with a meeting of SEQ.

DATES: September 17–18, 2008.

ADDRESSES: 9, rue de la Fédération, Paris, France.

FOR FURTHER INFORMATION CONTACT: Diana D. Clark, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–3417.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

Meetings of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on September 17, 2008, beginning at 9 a.m. and on September 18 beginning at 9 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) on September 17, and a meeting of the SEQ on September 18. The IAB will also hold a preparatory meeting among company representatives at the same location from 8:30 a.m. to 9 a.m. on September 18. The agenda for this preparatory meeting is to discuss the September 17 joint meeting of the SEQ and SOM and to review the agenda for the SEQ meeting.

The agenda of the joint SEQ/SOM meeting on September 17 is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the March 2008 SEQ/SOM Joint Session
3. Oil Market Update
   —Presentation on the *Medium-term Oil Market Report*
   —Update on the Near-Term Oil Market
   —Follow-up to the Jeddah Oil Summit
4. Natural Gas Market Update
   —*The IEA Gas Market Review 2008* (published September 2008)
   —Security of Natural Gas Supply
5. Links between the Oil and Gas Markets: Perspectives for Emergency Preparedness
6. Weekly Reporting of Stock Data as Proposed by the EU
7. Finalizing the Program of Work 2009–2010

The agenda of the SEQ meeting on September 18, 2008, is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 123rd Meeting
3. Status of Compliance with IEP Stockholding Commitments
4. Emergency Response Exercise 4
   —Evaluation of ERE4 and Lessons Learned for Future Work
5. Policy and Other Developments in Member Countries
   —Czech Republic
   —United States
   —Australia
   —Turkey
6. Activities with International Organizations and Non-Member Countries
   —Accession of Poland to the IEA
   —Towards a Revised EU Directive on Emergency Oil Stocks
   —Accession of Estonia to the IEA
7. Documents for Information
   —Monthly Oil Statistics: June 2008
   —Emergency Reserve Situation of IEA Member Countries on July 1, 2008
   —Emergency Reserve Situation of IEA Candidate Countries on July 1, 2008
   —Base Period Final Consumption: 3Q 2007–2Q 2008
   —Schedule of Emergency Response Reviews
   —Emergency Contacts List
8. Other Business
   —Tentative Schedule of Meetings
   —November 18–20, 2008
   —March 24–26, 2009
   —June 23–25, 2009

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the Government Accountability Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC, August 29, 2008.

Diana D. Clark,

Assistant General Counsel for International and National Security Programs.

[FR Doc. E8–20623 Filed 9–4–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 28, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–1361–014; ER99–2781–012; ER98–4138–010; ER00–1770–020; ER02–453–011; ER98–3096–016; ER07–903–003; ER05–1054–004; ER01–202–009.

Applicants: Atlantic City Electric Company, Delmarva Power & Light Company, Potomac Electric Power Company, Conectiv Energy Supply, Inc., Conectiv Atlantic Generation, LLC, Conectiv Delmarva Generation, LLC, Conectiv Bethlehem LLC, Pepco Energy Services, Bethlehem Renewable Energy, LLC, Eastern Landfill Gas, LLC, Potomac Power Resources, LLC.

Description: PHI Entities submits a revised updated market power study to reflect the impact of the simultaneous transmission import limitation studies submitted by PJM.

Filed Date: 08/22/2008.

Accession Number: 20080827–0201.

Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: ER99–845–013.

Applicants: Puget Energy, Inc.

Description: Puget Sound Energy, Inc. submits a notice of non-material change in status in compliance with reporting requirements set forth in section 35.42 of the regulation of the FERC and the requirements of Order 652.

Filed Date: 08/25/2008.

Accession Number: 20080827–0203.

Comment Date: 5 p.m. Eastern Time on Monday, September 15, 2008.

Docket Numbers: ER00–2129–002; ER04–994–005; ER03–382–006; ER06–1272–005; ER99–1801–010; ER02–1762–007; ER07–1300–002.

Applicants: Orion Power Midwest, L.P., Reliant Energy Wholesale Generation, LLC, Reliant Energy Electric Solutions, LLC, Reliant Energy Power Supply, LLC, Reliant Energy Services, Inc., Reliant Energy Solutions East, LLC, Reliant Energy Solutions Northeast, LLC.

Description: Reliant MBR Entities submits revisions to their market-based rate tariff to incorporate the FERC approved tariff provisions governing sales of ancillary services in the market to be administered by Midwest ISO.

Filed Date: 08/27/2008.

Accession Number: 20080827–0202.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: ER00–3614–008.
Applicants: BP Energy Company.
Description: BP Energy Company submits a revised page of its market-based rate wholesale power sales tariff to identify BPEC as a Category 2 seller.
Filed Date: 08/22/2008.
Accession Number: 20080825–0247.
Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: ER01–205–000.
Applicants: Xcel Energy Services Inc.
Description: Xcel Energy Services Inc. submits errata to its August 20, 2008 Change in Status Report Compliance Filing.
Filed Date: 08/27/2008.
Accession Number: 20080827–5075.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: ER01–3103–016.
Applicants: Astoria Energy, LLC.
Description: Astoria Energy, LLC submits notice of a change in status resulting from the consummation of the transaction authorized by FERC.
Filed Date: 08/22/2008.
Accession Number: 20080826–0242.
Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: ER04–839–003.
Applicants: MAG Energy Solutions, Inc.
Description: MAG Energy Solutions, Inc. submits its Order 697 Compliance Filing and Application for Category 1 status.
Filed Date: 08/22/2008.
Accession Number: 20080826–0253.
Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: ER07–1372–012.
Applicants: Midwest Independent Transmission System Operator.
Description: Midwest Independent Transmission System Operator, Inc. submits amendments to its Balancing Authority Agreement to comply with directives set forth in FERC's 7/21/08 Order.
Filed Date: 08/19/2008.
Accession Number: 20080821–0113.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 09, 2008.

Docket Numbers: ER08–1175–002.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk and Carthage Energy LLC submits information re the derivation of the annual charge of $6,136 that Carthage pays to Niagara pursuant to the Revised Service Agreement etc.
Filed Date: 08/25/2008.
Accession Number: 20080826–0252.
Comment Date: 5 p.m. Eastern Time on Monday, September 15, 2008.

Docket Numbers: ER08–1212–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an amendatory filing clean and redlined versions of the relevant tariff sheet that have been modified to account for the repayment of the Base Plan Funded Credits to Redbud.
Filed Date: 08/22/2008.
Accession Number: 20080826–0243.
Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: ER08–1220–001.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection LLC submits the Network Integration Transmission Service Agreement with Illinois Municipal Electric Agency for Network Integration Service.
Filed Date: 08/25/2008.
Accession Number: 20080826–0248.
Comment Date: 5 p.m. Eastern Time on Monday, September 15, 2008.

Docket Numbers: ER08–1264–001.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Authority files an amendment to its proposed revisions to section 29.2.8 and 30.2 of its Open Access Transmission Tariff.
Filed Date: 08/26/2008.
Accession Number: 20080827–0293.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 16, 2008.

Docket Numbers: ER08–1249–001.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits a clean version of the agreement with the designation of Rate Schedule FERC 105 to replace the designation of Service Agreement 215 shown in the original filing.
Filed Date: 08/26/2008.
Accession Number: 20080827–0294.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 16, 2008.

Docket Numbers: ER08–1371–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc., submits an amendatory filing to the August 7 filing which has been modified to account for the repayment of the Based Plan Funded Credits to Redbud Plan.
Filed Date: 08/22/2008.
Accession Number: 20080826–0244.
Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: ER08–1435–001.
Applicants: Midwest Independent Transmission System Operator.
Description: Midwest Independent Transmission System Operator, Inc ., re-submits the complete set of redlined and clean tariff sheets with the relevant page duly correct for the revision of the 8/21/08 filing.
Filed Date: 08/25/2008.
Accession Number: 20080826–0247.
Comment Date: 5 p.m. Eastern Time on Monday, September 15, 2008.

Docket Numbers: ER08–1437–000.
Applicants: Polytop Corporation.
Description: Polytop Corporation seeks to cancel their FERC Electric Tariff, Original Volume 1 and requests that the cancellation be effective 8/20/08.
Filed Date: 08/22/2008.
Accession Number: 20080826–0245.
Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: ER08–1439–000.
Applicants: New Brunswick Power Generation Corporation.
Description: New Brunswick Power Generation Corp. submits a Market-Based Rate Tariff for the sale of electric energy and capacity.
Filed Date: 08/22/2008.
Accession Number: 20080826–0255.
Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: ER08–1440–000.
Applicants: Midwest Independent Transmission System Operator.
Description: Midwest Independent Transmission System Operator, Inc., submits a Transmission Interconnection Agreement among MidAmerican Energy Company et al.
Filed Date: 08/25/2008.
Accession Number: 20080826–0251.
Comment Date: 5 p.m. Eastern Time on Monday, September 15, 2008.

Docket Numbers: ER08–1441–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits a Small Generator Interconnection Agreement and a Service Agreement for Wholesale Distribution Service, etc.
Filed Date: 08/25/2008.
Accession Number: 20080826–0250.
Comment Date: 5 p.m. Eastern Time on Monday, September 15, 2008.

Docket Numbers: ER08–1442–000.
Applicants: Flat Ridge Wind Energy, LLC.
Description: Application for Flat Ridge Wind Energy, LLC for order accepting initial market-based rate tariff, waiving regulations, and granting blanket approvals.
Filed Date: 08/25/2008.
Accession Number: 20080827–0204.
Comment Date: 5 p.m. Eastern Time on Monday, September 15, 2008.

Docket Numbers: ER08–1443–000; ER08–1443–001.
Applicants: Noble Great Plains Windpark, LLC.

Description: Noble Great Plains Windpark, LLC submits application for order accepting initial tariff, waiving regulations, including the sixty day prior notice request, etc. On 8/27/08 an amendment was submitted to the application.

Filed Date: 08/22/2008.

Accession Number: 20080826–0249.

Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: ER08–1444–000.

Applicants: Ameren Services Company.

Description: Ameren Service Company submits Notices of Cancellation for 147 transmission service agreements entered into under the joint open Access Transmission tariff of the Ameren Operating Companies under ER08–1444.

Filed Date: 08/25/2008.

Accession Number: 20080827–0099.

Comment Date: 5 p.m. Eastern Time on Monday, September 15, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–126–000.

Applicants: Mid-Continent Area Power Pool.

Description: Order No. 890 One-Time Distribution Methodology Compliance Filing under OA08–126.

Filed Date: 08/27/2008.

Accession Number: 20080827–5068.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR08–6–000.

Applicants: North American Electric Reliability Corp.

Description: Request of the North American Electric Reliability Corporation for Acceptance of its 2009 Business Plan and Budget, 2009 Business Plans and Budgets of Regional Entities and for Approval of Proposed Assessments To Fund Budgets.

Filed Date: 08/22/2008.

Accession Number: 20080822–5143.

Comment Date: 5 p.m. Eastern Time on Monday, September 11, 2008.

Docket Numbers: RR08–7–000.

Applicants: North American Electric Reliability Corp.

Description: Petition for Approval of Proposed Revisions to the Bylaws of ReliabilityFirst Corporation under RP08–7.

Filed Date: 08/28/2008.

Accession Number: 20080828–5059.

Comment Date: 5 p.m. Eastern Time on Monday, September 17, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20531 Filed 9–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 29, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–119–000.

Applicants: Tiverton Power Inc., Rumford Power Inc.

Description: Application of Rumford Power Inc. and Tiverton Power Inc. under section 203 of FPA to Transfer Control.

Filed Date: 08/20/2008.

Accession Number: 20080820–5114.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1356–001.

Applicants: Maine Yankee Atomic Power Company.

Description: Maine Yankee Atomic Power Co. submits an amendment to the 8/1/08 filing of Third Revised Rate Schedule FERC No. 1.

Filed Date: 08/27/2008.

Accession Number: 20080828–0104.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: ER08–1445–000.

Applicants: American Electric Power Service Corporate.

Description: AEP Operating Companies submits an eighth revision to the Interconnection and Local Delivery Agreement between AEP and the Blue Ridge Power Authority.

Filed Date: 08/26/2008.

Accession Number: 20080828–0106.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 16, 2008.

Docket Numbers: ER08–1446–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits revisions to its FERC Electric Tariff, Seventh Revised Volume 11.

Filed Date: 08/26/2008.

Accession Number: 20080828–0107.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 16, 2008.

Docket Numbers: ER08–1447–000.

Applicants: NaturEner Glacier Wind Energy 1, LLC.

Description: NaturEner Glacier Wind Energy 1, LLC submits an executed Coordinated Operating Agreement.

Filed Date: 08/26/2008.

Accession Number: 20080828–0105.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 16, 2008.

Docket Numbers: ER08–1448–000.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits a table showing each of the applicable Southern Companies 2007 actual accruals for PBOP costs and projected accruals for 2008, and independent actuarial assumptions and serve as a basis for the 2008 projections under ER08–1448.

Filed Date: 08/27/2008.

Accession Number: 20080828–0102.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: ER08–1449–000.

Applicants: Tieton Hydropower, LLC.

Description: Tieton Hydropower, LLC submits its non-confirming Initial Transmission Rate Schedule FERC No. 1.

Filed Date: 08/27/2008.

Accession Number: 20080828–0103.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: ER08–1450–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits an executed Large Generator Interconnection Agreement between North Western and NaturEner Glacier Wind Energy 1, LLC.

Filed Date: 08/26/2008.

Accession Number: 20080828–0108.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 16, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–59–000.

Applicants: AEP Generating Company.

Description: Application of AEP Generating Company under section 204 of the Federal Power Act for Authorization to Issue Securities.

Filed Date: 08/21/2008.

Accession Number: 20080821–5032.

Comment Date: 5 p.m. Eastern Time on Thursday, September 11, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–32–002.

Applicants: PJM Interconnection, LLC.

Description: Supplemental Information of PJM Interconnection L.L.C. re the second compliance filing to PJM's transmission planning process to reflect further revisions to Schedule 6.

Filed Date: 08/13/2008.

Accession Number: 20080813–5111.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 9, 2008.

Docket Numbers: OA08–58–002.

Applicants: ISO New England Inc.

Description: ISO New England Inc. *et al.* submits proposed revisions to Appendix 1 to Attachment K of its Open Access Transmission Tariff etc., to comply with FERC's order issued on 5/15/08 under OA08–58.

Filed Date: 08/13/2008.

Accession Number: 20080828–0211.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 9, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Kimberly D. Bose,

Secretary.

[FR Doc. E8–20549 Filed 9–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2402–108–MI]

Upper Peninsula Power Company; Notice of Availability of Environmental Assessment

August 28, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed Upper Peninsula Power Company's proposed shoreline management plan for the Prickett Hydroelectric Project, located on the Sturgeon River in Baraga and Houghton Counties, Michigan, and has prepared an Environmental Assessment (EA).

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2402) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments on the EA should be filed by September 29, 2008, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please reference the project name and project number (P–2402) on all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Jon Cofrancesco at (202) 502–8951.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20525 Filed 9–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–68–001]

NSTAR Electric & Gas Corporation; Notice of Compliance Filing

August 28, 2008.

Take notice that on August 7, 2008, NSTAR Electric & Gas Corporation filed a revised Explanatory Statement and Offer of Settlement in compliance with the Commission's directive in the July 24, 2008 Order.

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 8, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20529 Filed 9–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1425–000]

ML Partnership, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 28, 2008.

This is a supplemental notice in the above-referenced proceeding of ML Partnership, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is September 18, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20528 Filed 9–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1398–000]

Smoky Hills Wind Project II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 28, 2008.

This is a supplemental notice in the above-referenced proceeding of Smoky Hills Wind Project II, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is September 18, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20527 Filed 9–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1354–000]

Occidental Chemical Corporation; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 28, 2008.

This is a supplemental notice in the above-referenced proceeding of Occidental Chemical Corporation's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is September 17, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20526 Filed 9–4–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0504; FRL–8370–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports; EPA ICR No. 1884.04, OMB Control No. 2070–0162

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports'' and identified by EPA ICR No. 1884.04 and OMB Control No. 2070–0162, is scheduled to expire on May 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before November 4, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0504, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0504. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0504. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Susan Sharkey, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8789; fax number: (202) 564–4775; e-mail address: *sharkey.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this action are companies that manufacture, process, or import chemical substances, mixtures, or categories.

Title: Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports.

ICR numbers: EPA ICR No. 1884.04, OMB Control No. 2070–0162.

ICR status: This ICR is currently scheduled to expire on May 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Toxic Substances Control Act (TSCA) requires EPA to compile and keep current a complete list of chemical substances manufactured or processed in the United States. EPA updates this inventory of chemicals every four years by requiring manufacturers, processors, and importers to provide production volume, plant site information and site-limited status information. This information allows EPA to identify what chemicals are or are not currently in commerce and to take appropriate regulatory action as necessary. EPA also uses the information for screening chemicals for risks to human health or the environment, for priority-setting efforts, and for exposure estimates. This ICR addresses the collection of inventory-related information.

Responses to the collection of information are mandatory (see 40 CFR part 710). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be 485 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 4,190.

Frequency of response: Once every five years.

Estimated total average number of responses for each respondent: 1.0.

Estimated total annual burden hours: 432,274 hours.

Estimated total annual costs: $19,400,000. This includes an estimated burden cost of $19,400,000 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are There Changes in the Estimates from the Last Approval?

There is an increase of 18,699 hours (from 413,575 hours to 432,274 hours) in the total estimated respondent burden compared with that identified in the ICR most recently approved by OMB. In the 2006 Inventory Update Rule (IUR) collection covered by the previous ICR, inorganic chemical were partially exempt and therefore, manufacturers (including importers) of inorganic chemicals completed only partial reports. However, in subsequent reporting periods, including the period covered by this ICR, manufacturers (including importers) of inorganic chemicals must complete full reports when the site-specific production volume is 300,000 pounds or more. Full reports are estimated to take an additional 85 hours to complete. This represents a program change.

EPA used data reported to the 2006 IUR collection to estimate numbers of respondents. Total sites reporting are estimated to be 4,190 for this collection. In the previous ICR, the number of sites responding was estimated to be 3,026 sites. This re-estimate is another reason for the change in burden hours. This change is an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: August 28, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8–20514 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0548; FRL–8711–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements—40 CFR Part 257, Subpart B, EPA ICR Number 1745.06, OMB Control Number 2050–0154

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on January 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 4, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2008–0548, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. 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–RCRA–2008–0548. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Office of Solid Waste, (mail code 5306P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703–308–9037; *fax number:* 703–308–8686; *e-mail address: dufficy.craig@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2008–0548, which is available for online viewing at *www.regulations.gov*, or in person viewing at the RCRA 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 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 RCRA Docket is 202–566–0270.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: EPA assumes that industrial waste units that previously co-disposed non-hazardous wastes and conditionally exempt small quantity generator (CESQG) hazardous waste on-site have ceased that practice and that commercial off-site industrial waste units are operating with stringent environmental controls in place. Therefore, entities that potentially will be affected by this action are limited to those that dispose of CESQG hazardous wastes in construction and demolition (C&D) waste landfills.

Title: Agency Information Collection Activities; Proposed Collection; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements—40 CFR Part 257, Subpart B.

ICR numbers: EPA ICR No. 1745.06, OMB Control No. 2050–0154.

ICR status: This ICR is currently scheduled to expire on January 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In order to effectively implement and enforce final changes to 40 CFR Part 257—Subpart B on a State level, owners/operators of construction and demolition waste landfills that receive CESQG hazardous wastes will have to comply with the final reporting and recordkeeping requirements. 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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. This continuing ICR documents the recordkeeping and reporting burdens associated with the location and ground-water monitoring provisions contained in 40 CFR Part 257—Subpart B.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Burden for this collection of information is estimated to average 74 hours per response.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated Number of Respondents: 183.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 13,581 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $938.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1745.06 and OMB Control No. 2050–0154 in any correspondence.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 18, 2008.

Maria P. Vickers,

Acting Director, Office of Solid Waste.

[FR Doc. E8–20595 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0572, FRL–8711–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Hazardous Remediation Waste Management Requirements (HWIR Contaminated Media), EPA ICR Number 1775.05, OMB Control Number 2050–0161

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on January 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 4, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2008–0572, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. 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–RCRA–2008–0572. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Mike Fitzpatrick, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8411; fax number 703–308–8617; e-mail address: *fitzpatrick.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2008–0572, which is available for on-line viewing at *www.regulations.gov*, or in-person viewing at the RCRA 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 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 RCRA Docket is 202–566–0270.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are business and other for-profit.

Title: Hazardous Remediation Waste Management Requirements (HWIR Contaminated Media).

ICR numbers: EPA ICR No. 1775.05, OMB Control No. 2050–0161.

ICR status: This ICR is currently scheduled to expire on January 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Resource Conservation and Recovery Act of 1976 (RCRA), as amended, requires EPA to establish a national regulatory program to ensure that hazardous wastes are managed in a manner protective of human health and the environment. Under this program (known as the RCRA Subtitle C program), EPA regulates newly generated hazardous wastes, as well as hazardous remediation wastes (*i.e.*, hazardous wastes managed during cleanup). To facilitate prompt and protective treatment, storage, and disposal of hazardous remediation wastes, EPA established three requirements for remediation waste management sites that are different from those for facilities managing newly generated hazardous waste:

- Performance standards for remediation waste management sites (40 CFR 264.1(j));
- A provision excluding remediation waste management sites from requirements for facility-wide corrective action; and
- A new form of RCRA permit for treating, storing, and disposing of hazardous remediation wastes (40 CFR part 270, subpart H). The new permit, a Remedial Action Plan (RAP), streamlines the permitting process for remediation waste management sites to allow cleanups to take place more quickly.

In addition, EPA created a new kind of unit called a ''staging pile'' (40 CFR 264.554) that allows more flexibility in storing remediation waste during cleanup. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: For owners/operators of hazardous remediation waste management sites subject to the 40 *CFR* 264.1(j) and part 270, subpart H requirements, the reporting burden is estimated to be 27.33 hours per respondent per year. The recordkeeping burden is estimated to be 42.13 hours per respondent per year. For owners/operators of hazardous remediation waste management sites subject to the 40 CFR 264.554 requirements for staging piles, the reporting burden is estimated to be 7.08 hours per year per respondent. The recordkeeping burden is estimated to be 12.61 hours per respondent per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 176.

Frequency of response: One-time.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 4,944 hours.

Estimated total annual costs: $8,026,000. This includes an estimated burden cost of $8,000,000 for labor, and an estimated cost of $26,000 for capital investment or maintenance and operational costs.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 18, 2008.

Maria P. Vickers,

Acting Director, Office of Solid Waste.

[FR Doc. E8–20596 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0073; FRL–8711–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements for Control Technology Determinations for Constructed and Reconstructed Major Sources of Hazardous Air Pollutants; EPA ICR No. 1658.05, OMB Control No. 2060–0373

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 renew an existing approved collection. This ICR is scheduled to expire on October 31, 2008. 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 6, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0073 to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 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: Rick Colyer, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policy and Programs Division, Program Design Group, D205–02, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5262, e-mail *colyer.rick@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 May 22, 2008 (73 FR 29750) 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–OAR–2004–0073, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Air 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 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 Air Docket is 202–566–1742.

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: Control Technology Determination for Constructed or Reconstructed Major Sources of Hazardous Air Pollutants.

ICR numbers: EPA ICR No. 1658.05, OMB Control No. 2060–0373.

ICR status: This ICR is scheduled to expire on October 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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: Section 112(g)(2)(B) of the Clean Air Act as amended in 1990 (CAA) requires that maximum achievable control technology (MACT) standards be met by constructed or reconstructed major sources of hazardous air pollutants (HAP). Where no applicable emission limit has been set, the MACT determination shall be made on a case-by-case basis. The source owner or operator must submit certain information to allow the permitting authority to perform a case-by-case MACT determination (40 CFR 63.43(e)). Permitting agencies, either State, local, Tribal or Federal, review information submitted and make case-by-case MACT determinations. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 134 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: Owners or operators who construct or reconstruct a major source of HAP emissions and are responsible for obtaining a case-by-case MACT determination under CAA section 112(g); State, local, and Tribal agencies with operating permit programs that have been approved by EPA.

Estimated Number of Annual Respondents: 48.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 6,437.

Estimated Total Annual Cost: $432,503, which includes $969 in O&M costs and no capital costs.

Changes in the Estimates: There is a decrease of 30,363 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The primary reason for the decrease in estimated burden hours is because the universe of potentially affected sources is much smaller than that estimated under the currently approved ICR. The 112(g) regulation

applies to constructed or reconstructed major sources for which no MACT standard exists. Since approval of the current ICR, we have completed promulgation of MACT standards for the source category list, resulting in few major sources that could be constructed or reconstructed over the next 3 years that do not have applicable MACT standards.

Dated: August 28, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–20597 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0947; FRL–8711–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Clean Air Interstate Rule To Reduce Interstate Transport of Fine Particle Matter and Ozone (Renewal); EPA ICR No. 2152.03, OMB Control No. 2060–0570

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 renew an existing 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 6, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0947, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Fax: (202) 566–9744, or Air Docket, Environmental Protection Agency, Mail code: 2822T, 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: Ruben D. Deza, Clean Air Markets Division, (6204J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9364; fax number: 202–343–2359; e-mail address: *deza.ruben@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 05/06/08 (73 FR 24973), 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 EPA Docket ID No. EPA-HQ–OAR–2006–0947, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation 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 Air and Radiation Docket is (202) 566–1742.

Use EPA's electronic docket and comment system at *http://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 *http://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 *http://www.regulations.gov*.

Title: Clean Air Interstate Rule to Reduce Interstate Transport of Fine Particle Matter and Ozone (Renewal).

ICR numbers: EPA ICR No. 2152.03, OMB Control No. 2060–0570.

ICR Status: This ICR is currently scheduled to expire on September 30, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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: The United States (U.S.) Environmental Protection Agency (EPA) promulgated the Clean Air Interstate Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone, which includes reporting requirements and combines these requirements with existing requirements from the Consolidated Emissions Reporting Rule (CERR), the Emission Reporting Requirements for Ozone State Implementation Plan (SIP) Revisions Relating to Statewide Budgets for NO_X Emissions to Reduce Regional Transport of Ozone (NO_X SIP Call) and the Acid Rain Program under Title IV of the CAA Amendments of 1990. Each of these three existing requirements has an approved ICR in place. This ICR is being submitted to account for the incremental burden associated with CAIR. The ICR details the additions and changes to reporting requirements associated with CAIR. These changes include: (1) Changes to existing requirements for emission reporting under the CERR; and (2) the addition of reporting requirements to support emissions trading in States using the CAIR model cap and trade rules.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 87 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1,190.

Frequency of response: Quarterly.

Estimated total annual burden hours: 404,705 hours.

Estimated total annual costs: $51,472,083, which included $26,309,080 in capital and O&M costs.

Changes in the Estimates: There is an increase of 22,012 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This ICR incorporates the burden associated with all CAIR-affected sources, including those located in NO_X SIP Call States. The NO_X SIP Call ICR (OMB Control Number 2060–0445) expires at the end of 2008. As such, starting in 2009, the burden associated with the NO_X trading program requirements under the NO_X SIP Call are now covered in this ICR. Without incorporating those burdens and costs, the overall labor burden in this ICR would be less than the estimate in the prior version of this ICR.

Dated: August 28, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–20598 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0242; FRL–8711–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; State Program Adequacy Determination: Municipal Solid Waste Landfills and Non-Municipal, Non-Hazardous Waste Disposal Units That Receive Conditionally Exempt Small Quantity Generator Hazardous Waste (Renewal), EPA ICR Number 1608.05, OMB Control Number 2050–0152

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 renew an existing 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 6, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2008–0242, to (1) EPA, either online using *http://www.regulations.gov* (our preferred method), or by email to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, 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: Craig Dufficy, Office of Solid Waste (mail code 5306P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9037; fax number: 703–308–8686; e-mail address: *dufficy.craig@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 May 6, 2008 (73 FR 24979), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. 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–RCRA–2008–0242, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Resource Conservation and Recovery Act (RCRA) 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 RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *http://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 *http://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 *http://www.regulations.gov.*

Title: State Program Adequacy Determination: Municipal Solid Waste Landfills and Non-Municipal, Non-Hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator Hazardous Waste (Renewal).

ICR numbers: EPA ICR No. 1608.05, OMB Control No. 2050–0152.

ICR Status: This ICR is scheduled to expire on September 30, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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: Section 4010(c) of the Resource Conservation and Recovery Act (RCRA) of 1976 requires that EPA revise the landfill criteria promulgated under paragraph (1) of Section 4004(a) and Section 1008(a)(3). Section 4005(c) of RCRA, as amended by the Hazardous Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) and non-municipal, non-hazardous waste disposal units that receive household hazardous waste or conditionally exempt small quantity generator (CESQG) hazardous waste are in compliance with the revised criteria for the design and operation of non-municipal, non-hazardous waste disposal units under 40 CFR Part 257, Subpart B and MSWLFs under 40 CFR Part 258. (40 CFR Part 257, Subpart B and 40 CFR Part 258 are henceforth referred to as the ''revised federal criteria''.) Section 4005(c) of RCRA further mandates the EPA Administrator to determine the adequacy of state permit programs to ensure owner and/or operator compliance with the revised federal criteria. A state program that is deemed adequate to ensure compliance

may afford flexibility to owners or operators in the approaches they use to meet federal requirements, significantly reducing the burden associated with compliance.

In response to the statutory requirement in section 4005(c), EPA developed 40 CFR Part 239, commonly referred to as the State Implementation Rule (SIR). The SIR describes the state application and EPA review procedures and defines the elements of an adequate state permit program. The collection of information from the state during the permit program adequacy determination process allows EPA to evaluate whether a program for which approval is requested is appropriate in structure and authority to ensure owner or operator compliance with the revised federal criteria.

The EPA Administrator has delegated the authority to make determinations of adequacy, as contained in the statute, to the EPA Regional Administrator. The appropriate EPA Regional Office, therefore, will use the information provided by each state to determine whether the state's permit program satisfies the statutory test reflected in the requirements of 40 CFR Part 239. In all cases, the information will be analyzed to determine the adequacy of the state's permit program for ensuring compliance with the federal revised criteria.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 242 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, Local, or Tribal Governments.

Estimated Number of Respondents: 12.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 968.

Estimated Total Annual Cost: $51,545, which includes $51,545 for annualized labor and $0 for annualized capital or O&M costs.

Changes in the Estimates: There is no change in the estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: August 28, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–20601 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8585–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080234, ERP No. D–AFS–L65556–WA, Dosewallips Road Washout Project, To Reestablish Road Access to both Forest Service Road (FSR) 2610 and Dosewallips Road, Hood Canal Ranger District Olympic National Forest, Olympic National Park, Jefferson County, WA.

Summary: EPA expressed environmental concerns about air quality, water quality and critical fish habitat impacts. EPA also recommended that the Final EIS include additional information regarding erosion and sediment control measures to minimize aquatic impacts. Rating EC2.

EIS No. 20080259, ERP No. D–AFS–J65521–WY, Spruce Gulch Bark Beetle and Fuels Reduction Project, Proposes to Implement Bark Beetle Related Salvage and Suppression Vegetative Treatments and Hazardous Fuels Abatement Treatments, Laramie Ranger District, Medicine Bow-Routt National Forests, Albany and Carbon Counties, WY.

Summary: EPA expressed environmental concerns about potential impacts to water quality and wildlife habitat from new road construction and proposed silvicultural activities. EPA recommended including more detailed implementation parameters when applying adaptive management prescriptions in the final EIS. Rating EC2.

EIS No. 20080261, ERP No. D–USA–K11121–CA, PROGRAMMATIC—Brigade Combat Team Transformation Project, Restructure the 11th Armored Cavalry Regiment (ACR) to a Multi-Component (active duty/reserve) Heavy Brigade Combat Team (HBCT) and change/add several other organizations, Fort Irwin, CA.

Summary: EPA expressed environmental objections to impacts on water resources. Rating EO2.

EIS No. 20080267, ERP No. DS–BLM–K08066–CA, Sunrise Powerlink Transmission Line Project, New Information, Proposed Land Use Plan Amendment, Construction and Operation of a New 91-mile 500 kilovolt (kV) Electric Transmission Line from Imperial Valley Substation (in Imperial Co. near the City of El Centro) to a New Central East Substation (in Central San Diego County) Imperial and San Diego Counties, CA.

Summary: EPA continues to have environmental concerns about adverse impacts to watershed resources, air quality, and the Anza-Borrego Desert State Park. EPA recommends further discussion on purpose and need, and recommends consideration of alternatives with reduced environmental impacts. Rating EC2.

Dated: September 2, 2008.

Ken Mittehlholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–20599 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8585–3]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements.

Filed 08/25/2008 through 08/29/2008.

Pursuant to 40 CFR 1506.9.

EIS No. 20080336, Draft EIS, AFS, OR, Farley Vegetation Management Project, To Conduct Timber Harvest Commercial and Non-Commercial

Thinning, Fuels Treatment Prescribed Burning and Reforestation, Desolation Creek, North Fork John Day Ranger District, Umatilla National Forest, Grant County, OR, Comment Period Ends: 10/20/2008, Contact: Craig Smith-Dixon 541–278–3716.

EIS No. 20080337, Final EIS, BLM, 00, *Programmatic EIS*—Oil Shale and Tar Sands Resource Management (RMP) Amendments to Address Land Use Allocations in Colorado, Utah and Wyoming, Wait Period Ends: 10/06/2008, Contact: Mitchell Leverette 202–452–5088.

EIS No. 20080338, Final EIS, FHW, UT, UT–108 Transportation Improvement Project, To Improve Local and Regional Mobility from UT–108 between UT–127 (Antelope Drive) to UT–126 (1900 West) Located in Syracuse, West Point and Clinton in Dave County, and Roy and West Haven in Weber County, UT, Wait Period Ends: 10/06/2008, Contact: Douglas S. Atkin, PE. 801–963–0182.

EIS No. 20080339, Final EIS, BLM, UT, Monticello Field Office Resource Management Plan, To Guide the Management of Public Land, Southern two-thirds of San Juan County and small portion on the Northern boundary within Grand County, UT, Wait Period Ends: 10/06/2008, Contact: Pam Schuller 801–539–4050.

EIS No. 20080340, Draft EIS, FHW, UT, SR–262; Montezuma Creek to Aneth Project, Improvements to the Intersection of SR–162, SR–262, and County Road (CR) 450 in Montezuma Cree, Funding, Navajo Nation, San Juan County, UT, Comment Period Ends: 10/20/2008, Contact: Brenda Redwing 801–963–0182.

EIS No. 20080341, Final EIS, AFS, ID, Idaho Roadless Area Conservation Project, To Provide State-Specific Direction for the Conservation and Management of Inventoried Roadless Areas, National Forest System Lands in Idaho, Wait Period Ends: 10/06/2008, Contact: Ken Karkula 202–205–2869.

EIS No. 20080342, Final EIS, AFS, WY, Inyan Kara Analysis Area Vegetation Management, Proposes to Implement Best Management Livestock Grazing Practices and Activities Associated with Adaptive Management and Monitoring Strategies, Douglas Ranger District, Medicine Bow Routt National Forest and Thunder Basin National Grassland, Niobrara and Weston Counties, WY, Wait Period Ends: 10/06/2008, Contact: Ernie Gipson 307–358–4960.

EIS No. 20080343, Draft EIS, FRC, OR, Jordan Cove Energy and Pacific Connector Gas Pipeline Project, Construction and Operation, Liquefied Natural Gas (LNG) Import Terminal and Natural Gas Pipeline Facilities, Coos, Douglas, Jackson and Klamath Counties, OR, Comment Period Ends: 12/04/2008, Contact: Patricia Schaub 1–866–208–3372.

Dated: September 2, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–20602 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0191; FRL–8381–4]

Pesticide Program Dialogue Committee, Pesticide Registration Improvement Act Process Improvement Workgroup; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Pesticide Program Dialogue Committee (PPDC), Pesticide Registration Improvement Act (PRIA) Process Improvement Workgroup will hold its eleventh public meeting on September 23, 2008. An agenda for this meeting is being developed. The agenda will include recent process improvements to implement PRIA 2 such as electronic submission, application tools and systems to track progress in meeting PRIA due dates and in registration review, and will be posted on EPA's website. The workgroup is developing advice and recommendations on topics related to EPA's registration and registration review processes.

DATES: The meeting will be held on Tuesday, September 23, 2008, from 1 p.m. to 4 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leovey, Immediate Office, 7501P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7328; fax number: (703) 308–4776; e-mail address: *leovey.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to persons who are concerned about implementation of PRIA 2, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Federal Food, Drug, and Cosmetic Act (FFDCA). Other potentially affected entities may include but are not limited to agricultural workers and farmers; pesticide industry trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. Since other entities may also be interested, the Agency has not attempted to describe all specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2007–0191. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

EPA's Office of Pesticide Programs (OPP) is entrusted with the responsibility of ensuring the safety of the American food supply, protection and education of those who apply or are exposed to pesticides occupationally or through use of products, and the general protection of the environment and special ecosystems from potential risks

posed by pesticides. The PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, for a 2–year term and has been renewed every 2 years since that time. The PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from the use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations. Copies of the PPDC charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request. Copies of the minutes of past meetings of this workgroup are available on the internet at *http://www.epa.gov/pesticides/ppdc/pria/index.html*.

III. How Can I Request to Participate in this Meeting?

This meeting will be open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting. Opportunity will be provided for questions and comments by the public. Any person who wishes to file a written statement may do so before or after the meeting by giving a copy of the statement to the person listed under **FOR FURTHER INFORMATION CONTACT**. These statements will become part of the permanent record and will be available for public inspection at the address listed under Unit 1.B.1. Do not submit any information in your request that is considered CBI.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

List of Subjects

Environmental protection.

Dated: August 28, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E8–20594 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0104; FRL–8353–5]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before October 6, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0104, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0104. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Registration Applications

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing a New Active Ingredient not Included in any Previously Registered Product

File Symbol: 84565–R. *Applicant*: Bull Run Scientific, VBT Regulatory Agent: Conn and Smith, Inc., 6713 Catskill Road, Lorton, VA 22079–1113. *Product name*: Bull Run Japanese and Oriental Beetle Trap. Biochemical Pheromone attractant *Active ingredient*: Z-7-Tetradecen-2-one at 0.034%. *Proposal classification/Use*: Biochemical pheromone attractant for control of Japanese and Oriental beetles.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 26, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–20521 Filed 9–4–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0046; FRL–8380–4]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities

DATES: Comments must be received on or before October 6, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form

of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each pesticide petition summary and may be contacted by telephone or e-mail. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 8F7373*. (EPA–HQ–OPP–2008–0126). Chemtura Corporation, 199 Benson Road, Middlebury, CT 06749, proposes to establish a tolerance for residues of the insecticide bifenazate, hydrazine carboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl) 1-methylethyl ester, in or on corn, grain at 0.02 part per million (ppm); corn, sweet, kernel plus cob with husks removed at 0.05 ppm; corn, forage at 25 ppm; corn, stover at 13 ppm; and aspirated grain fractions at 0.7 ppm. The analytical method was designed to convert all residues of D3598, a significant metabolite, to the parent compound (bifenazate) for analysis. The method utilizes reversed phase high performance liquid chromatography (HPLC) to separate the bifenazate from matrix derived interferences, and oxidative coulometric electrochemical

detection for the identification and quantification of this analyte. The limit of quantitation (LOQ) for bifenazate in corn matrices and processed commodities was 0.01 ppm. The limit of detection (LOD) for the method is set at 0.005 ppm. The method has also been validated by liquid chromatography/mass spectrometry/mass spectroscopy (LC/MS/MS), and used for the confirmation of residues for corn raw agricultural commodities (RAC) and processed commodities. The analytical method for bifenazate and its major metabolite D3598, in animal tissues was designed using the same principles invoked in the plant method, with minor modifications. However, in animal tissue samples, a separate aliquot of the extract was used to determine residues of A1530, and its sulfate (combined) in milk and meat samples (as these metabolites appeared to be significant in the goat metabolism studies). The extract was subjected to acid hydrolysis to convert the sulfate conjugate to A1530, before it was quantified by LC/MS/MS. Another metabolite, D9569, was also monitored in milk by LC/MS/MS. Contact: Amer Al-Mudallal, (703) 605–0566; *al-mudallal.amer@epa.gov*.

2. *PP 8F7395*. (EPA–HQ–OPP–2008–0646). Valent U.S.A. Corporation, P.O. Box 8025, Walnut Creek, CA 94596 (as Agent for Sumitomo Chemical Company, Ltd.), proposes to establish a tolerance for residues of the insecticide clothianidin, (*E*)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on almond, hull at 1.5 ppm; cotton, seed at 0.25 ppm; cotton, gin trash at 4.5 ppm; cotton, meal at 0.25 ppm; cotton, hull at 0.25 ppm; cotton, refined oil at 0.01 ppm; soybean, seed at 0.03 ppm; soybean, hull at 0.35 ppm; soybean, meal at 0.07 ppm; soybean, oil at 0.01 ppm; tomato, paste at 0.08 ppm; tomato, puree at 0.07 ppm; nut, tree, group 14 at 0.01 ppm; vegetable, cucurbit, group 9 at 0.05 ppm; and vegetable, fruiting, group 8 at 0.25 ppm; and clothianidin, (*E*)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine and its metabolite, *N*-(2-chlorothiazol-5-ylmethyl)-*N*'-methylguanidine (TMG), in or on vegetable, leafy, brassica, group 5 at 3.0 ppm; and vegetable, leafy, except brassica, group 4 at 3.5 ppm. Adequate enforcement methodology LC/MS/MS analysis is available to enforce the tolerance expression. Contact: Kable Davis, (703) 306–0415; *davis.kable@epa.gov*.

New Exemption from an Inert Tolerance

PP 8E7402. (EPA–HQ–OPP–2008–0652). Falcon Lab, LLC, 1103 Norbee Drive, Wilmington, DE 19803, proposes to establish an exemption from the requirement of a tolerance in 40 CFR 180.910 and 40 CFR 180.950 for residues of ammonium salts of higher fatty acids, [C_8-C_{18} saturated and C_8-C_{12} unsaturated, (CAS No. 84776–33–0)], when used as a pesticide inert ingredient in pesticide formulations in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, (703) 347–8825; *samek.karen@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 27, 2008.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E8–20519 Filed 9–5–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 22, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Harrison I. Steans, Bannockburn, Illinois, and Jennifer W. Steans, Evanston, Illinois, Financial Investments Corporation, PCB, LP, General Partners; Heather A. Steans; Robin M. Steans, all of Chicago, Illinois; Harrison I. Steans Self–Declaration of Revocable Trust – Harrison I. Steans, Trustee, both of Bannockburn, Illinois; Jennifer W. Steans 1999 Descendents Trust – James P. Kastenholz, Trustee, both of Evanston, Illinois; Heather A. Steans 1999 Descendants Trust – Leo A. Smith, Trustee; Robin M. Steans 1999 Descendents Trust – Leonard A. Gail, Trustee, both of Chicago, Illinois; Jennifer W. Steans 2000 Trust – Jennifer W. Steans, Trustee, both of Evanston, Illinois; Heather A. Steans 2001 Trust – Heather A. Steans, Trustee; Robin M. Steans Revocable Trust – Robin M. Steans, Trustee, both of Chicago, Illinois; James P. Kastenholz 2000 Trust – James P. Kastenholz, Trustee, both of Evanston, Illinois; Leonard A. Gail Revocable Trust – Leonard A. Gail, Trustee, both of Chicago, Illinois; Hunter Family Foundation – Thomas B. Hunter, III, and Maxine M. Hunter, Trustees; Maxine M. Hunter Charitable Lead Annuity Trust – Thomas B. Hunter, IV, all of Lake Forest, Illinois, and Willard M. Hunter, Trustees, Lake Bluff, Illinois; Thomas B. Hunter, III Self Declaration of Revocable Trust – Thomas B. Hunter, III, Trustee; Morrison Family Foundation – Harold M. Morrison; Adeline S. Morrison, Trustees; Harold M. Morrison Trust – Harold M. Morrison, Trustee, all of Lake Forest, Illinois; and USAmeriBancorp, Largo, Florida, to acquire voting shares of Taylor Capital Group, Rosemont, Illinois, and thereby indirectly acquire control of Cole Taylor Bank, Chicago, Illinois.

Board of Governors of the Federal Reserve System, September 2, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–20583 Filed 9–4–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 5, 2008

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 5, 2008.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and

[1] Copies of the Minutes of the Federal Open Market Committee meeting on August 5, 2008, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 2 percent.

By order of the Federal Open Market Committee, August 26, 2008.

Brian F. Madigan,

Secretary, Federal Open Market Committee.

[FR Doc. E8–20558 Field 9–4–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

SES Performance Review Board

AGENCY: Federal Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given of the appointment of members to the Federal Trade Commission's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Karen Leydon, Director of Human Resources, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326-2633.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314 (c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations regarding performance ratings, performance awards, and pay-for-performance pay adjustments to the FTC Chairman.

The following individuals have been designated to serve on the FTC's Performance Review Board:

Charles H. Schneider, Chairman

William Blumenthal

Pauline M. Ippolito

Lydia B. Parnes

David P. Wales

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–20571 Filed 9–4–08: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10151 and CMS–10152]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Data Collection for Medicare Beneficiaries Receiving Implantable Cardioverter-defibrillator for Primary Prevention of Sudden Cardiac Death; *Use:* The Centers for Medicare and Medicaid Services (CMS) provides coverage for implantable cardioverter-defibrillators (ICDs) for secondary prevention of sudden cardiac death based on extensive evidence showing that use of ICDs among patients with a certain set of physiologic conditions are effective. Accordingly, CMS considers coverage for ICDs reasonable and necessary under Section 1862 (a)(1)(A) of the Social Security Act. However, evidence for use of ICDs for primary prevention of sudden cardiac death is less compelling for certain patients.

To encourage responsible and appropriate use of ICDs, CMS issued a Decision Memo for Implantable Defibrillators on January 27, 2005, indicating that ICDs will be covered for primary prevention of sudden cardiac death if the beneficiary is enrolled in either an FDA-approved category B IDE clinical trial (42 CFR 405.201), a trial under the CMS Clinical Trial Policy (NCD Manual § 310.1) or a qualifying prospective data collection system (either a practical clinical trial or prospective systematic data collection, which is sometimes referred to as a registry). *Form Number:* CMS–10151 (OMB# 0938–0967); *Frequency:* Reporting—Quarterly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 1,217; *Total Annual Responses:* 50,000; *Total Annual Hours:* 12,500.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Data collection for Medicare Beneficiaries Receiving FDG Positron Emission Tomography (PET) for Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung, and All Other Cancers *Use:* In the Decision Memo #CAG–00181N issued on January 27, 2005, CMS determined that the evidence is sufficient to conclude that for Medicare beneficiaries receiving FDG positron emission tomography (PET) for brain, cervical, ovarian, pancreatic, small cell lung, and testicular cancers is reasonable and necessary only when the provider is participating in and patients are enrolled in a systematic data collection project. CMS will consider prospective data collection systems to be qualified if they provide assurance that specific hypotheses are addressed and they collect appropriate data elements. The data collection should include baseline patient characteristics; indications for the PET scan; PET scan type and characteristics; FDG PET results; results of all other imaging studies; facility and provider characteristics; cancer type, grade, and stage; long-term patient outcomes; disease management changes; and anti-cancer treatment received. *Form Number:* CMS–10152 (OMB# 0938–0968); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 2,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 4,167.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference

the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *November 4, 2008*:

1. *Electronically*. You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail*. You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs,
Division of Regulations Development,
Attention: Document Identifier/OMB Control Number _____,
Room C4–26–05,
7500 Security Boulevard,
Baltimore, Maryland 21244–1850.

Dated: *August 29, 2008*.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–20686 Filed 9–4–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0312]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Extralabel Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 6, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0325. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Extralabel Drug Use in Animals—21 CFR part 530 (OMB Control Number 0910–0325)—Extension

Under part 530 (21 CFR Part 530), a veterinarian is permitted to prescribe the extralabel use of approved new animal drugs. Section 530.22 (b) of the implementing regulations permits FDA, if it finds there is a reasonable probability that the extralabel use of an animal drug may present a risk to the public health, to: (1) Establish a safe level for a residue from the extralabel use of the drug, and (2) require the development of an analytical method for the detection of residues above that established safe level. To date, FDA has not established a safe level for a residue from the extralabel use of any new animal drug and therefore has not required the development of analytical methodology. However, the agency believes that there may be instances when analytical methodology will be required. Thus, FDA is estimating the reporting burden based on two methods being required annually. The requirement to establish an analytical method may be fulfilled by any interested person. The agency believes that the sponsor of the drug will be willing to develop the method in most cases. Alternatively, FDA, the sponsor, and perhaps a third party may cooperatively arrange for method development. The respondents may be sponsors of new animal drugs, State, or Federal government, or individuals.

In the **Federal Register** of June 3, 2008 (73 FR 31693), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
530.22(b)	2	1	2	4,160	8,320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 28, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–20578 Filed 9–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2005–N–0474] (formerly Docket No. 2005N–0210)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 6, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0363. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Veterinary Feed Directive—21 CFR Part 558 (OMB Control Number 0910–0363)—Extension

With passage of the Animal Drug Availability Act, Congress enacted legislation establishing a new class of restricted feed use drugs called Veterinary Feed Directive (VFD) drugs. The VFD class of drugs may be distributed without involving State pharmacy laws. Although controls on the distribution and use of VFD drugs are similar to controls for prescription drugs regulated under section 503(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 503(f)), the implementing VFD regulation under section 558.6 (21 CFR 558.6) is tailored to the unique circumstances relating to the distribution of medicated feeds. The content of the VFD is spelled out in the regulation. All distributors of medicated feed containing VFD drugs must notify FDA of their intent to distribute, and the distribution records of all medicated feeds containing VFD must be maintained. The VFD regulation ensures the protection of the public health while enabling animal producers to obtain and use needed drugs as efficiently and cost-effectively as possible.

In the **Federal Register** of June 5, 2008 (73 FR 32029), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
558.6(a)(3) through (a)(5)	15,000	25	375,000	.25	93,750
558.6(d)(1)(i) through (d)(1)(iii)	300	1	300	.25	75
558.6(d)(1)(iv)	20	1	20	.25	5
558.6(d)(2)	1,000	5	5,000	.25	1,250
514..1(b)(9)	1	1	1	3.00	3
Total	16,321				95,083

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
558.6(c)(1) through (c)(4)	112,500	10	1,125,000	.0167	18,788
558.6(e)(1) through (e)(4)	5,000	75	375,000	.0167	6,263
Total	117,500				25,051

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 28, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–20579 Filed 9–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0448]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Gamma-hydroxybutyric acid; Ketamine; Dextromethorphan; N-benzylpiperazine; 1-(3-trifluoromethylphenyl)piperazine; 1-(3-chlorophenyl)piperazine; 1-(4-Methoxyphenyl)piperazine; 1-(3,4-methylenedioxybenzyl)piperazine; Gamma-butyrolactone; 1,4-Butanediol

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments concerning abuse potential, actual abuse, medical usefulness, trafficking, and impact of scheduling changes on availability for medical use of 10 drug substances. These comments will be considered in preparing the United States' response to the World Health Organization (WHO) regarding the abuse liability and diversion of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting comments is required by the Controlled Substances Act (CSA).

DATES: Submit written or electronic comments by October 6, 2008.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: James R. Hunter, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5146, Silver Spring, MD 20993-0002, 301 796–3156, e-mail: *james.hunter@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances (the Psychotropic Convention). Article 2 of the Psychotropic Convention provides that if a party to the convention or WHO has information about a substance, which in its opinion may require international control or change in such control, it should notify the Secretary General of the United Nations (the Secretary-General) and provide the Secretary-General with information in support of its opinion.

The CSA (21 U.S.C. 811 *et seq.*) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Psychotropic Convention that it has information that may justify: (1) Adding a drug or other substances to one of the schedules of the convention, (2) transferring a drug or substance from one schedule to another, or (3) deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (the Secretary of HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments that HHS will consider in its preparation of the scientific and medical evaluations of the drug or substance.

I. WHO Notification

The Secretary of HHS received the following notices from WHO:

Ref.: C.L.16.2008

WHO Questionnaire for Collection of Information for Review of Dependence-Producing Psychoactive Substances

The World Health Organization presents its compliments and has the pleasure of informing Member States and Associate Members that the Thirty-fifth Expert Committee on Drug Dependence will meet from 20 to 23 April 2009 to review the following substances:

1. Gamma-hydroxybutyric acid (GHB)
2. Ketamine INN
3. Dextromethorphan pINN
4. N-benzylpiperazine (BZP)
5. 1-(3-trifluoromethylphenyl)piperazine (TFMPP)
6. 1-(3-chlorophenyl)piperazine (mCPP)
7. 1-(4-Methoxyphenyl)piperazine (MeOPP)
8. 1-(3,4-methylenedioxybenzyl)piperazine (MDBP)
9. Gamma-butyrolactone
10. 1,4-Butanediol

One of the essential elements of the established review procedure is for the Secretariat to collect relevant information from Member States to prepare a Critical Review Report for submission to the Expert Committee on Drug Dependence. The World Health Organization invites Member States to collaborate, as in the past, in this process by providing pertinent information mentioned in the attached questionnaire concerning substances listed above.

Further clarification on any of the above items can be obtained from Quality Assurance and Safety: Medicines, Department of Medicines Policy and Standards, WHO, Geneva, to which replies should be sent not later than 20 September 2008.

The World Health Organization takes this opportunity to renew to Member States and Associate Members the assurance of its highest consideration.

GENEVA, 28 May 2008

* * * * *

If statistical information requested is not readily available, a brief descriptive answer would be appreciated.

Please attach copies of relevant study reports and other background information as appropriate.

* * * * *

1. GAMMA-HYDROXYBUTYRIC ACID (GHB)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently authorized as a medical or veterinary product? (Yes/No)

1.2 If ''yes,'' since when has it been on the market?

1.3 Please indicate registered indications alphabetically.

1.4 Please indicate known off-label medical indications for which the substance is also used in your country.

1.5 Please indicate dosage form(s) and strength(s); also indicate special properties like slow release, etc.

Dosage Form	Strength	Remark

1.6 Please indicate brand names alphabetically (no dosage forms, strengths, etc.).

1.7 Are there any technical uses for the substance in your country?

If ''yes,'' please specify (Yes/No).

1.8 Is there any other legitimate use of the substance?

If ''yes,'' please specify (Yes/No).

1.9 If there is a legitimate use of the substance, how is the substance supplied? (Manufactured in the country/Imported/Both)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance used in a harmful way in your country? [1] (Yes/No/Unknown)

2.2 If ''yes,'' any information on how this is used (including route of administration)?

2.3 If ''yes,'' any information on the extent of harmful use?

2.4 If ''yes,'' any information on the extent of public health or social problems associated with the harmful use of the substance (statistics on overdose deaths, dependence, etc.)?

3. CONTROL OF THE SUBSTANCE

3.1 Is the substance controlled under legislation that is intended to regulate availability of substances of abuse (Controlled Substances Act or similar)? (Yes/No)

3.2 If yes, are there illicit activities involving the substance:

a. clandestine manufacture (Yes/No)

b. smuggling (Yes/No)

c. diversion (Yes/No)

d. other (please specify) (Yes/No)

3.3 Total quantity of seizures (kg/liter/number of ampoules).

3.4 Any additional information with regard to questions 3.2 and 3.3.

4. IMPACT OF SCHEDULING

(Gamma-hydroxybutyrate is in Schedule IV of the Convention on Psychotropic Substances of 1971 currently.)

4.1 If gamma-hydroxybutyric acid (GHB) is placed under more strict international control, do you think that its availability for medical use will be affected? (Yes/No)

4.2 If ''yes,'' how do you think that a transfer will impact its medical availability?

2. KETAMINE INN

1.LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently authorized as a medical or veterinary product? (Yes/No)

1.2 If ''yes,'' since when has it been on the market?

1.3 Please indicate registered indications alphabetically.

1.4 Please indicate known off-label medical indications for which the substance is also used in your country.

1.5 Please indicate dosage form(s) and strength(s); also indicate special properties like slow release, etc.

Dosage Form	Strength	Remark

1.6 Please indicate brand names alphabetically (no dosage forms, strengths, etc.).

1.7 Are there any technical uses for the substance in your country?

If ''yes,'' please specify (Yes/No).

1.8 Is there any other legitimate use of the substance? If ''yes,'' please specify (Yes/No).

1.9 If there is a legitimate use of the substance, how is the substance supplied? (Manufactured in the country/Imported/Both)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance used in a harmful way in your country? (Yes/No/Unknown)

2.2 If ''yes,'' any information on how this is used (including route of administration)?

2.3 If ''yes,'' any information on the extent of harmful use?

2.4 If ''yes,'' any information on the extent of public health or social problems associated with the harmful use of the substance (statistics on overdose deaths, dependence, etc.)?

3. CONTROL OF THE SUBSTANCE

3.1 Is the substance controlled under legislation that is intended to regulate availability of substances of abuse (Controlled Substances Act or similar)? (Yes/No)

3.2 If ''yes,'' are there illicit activities involving the substance:

a. clandestine manufacture (Yes/No)

b. smuggling (Yes/No)

c. diversion (Yes/No)

d. other (please specify) (Yes/No)

3.3 Total quantity of seizures (kg/number of tablets/number of ampoules).

3.4 Any additional information with regard to questions 3.2 and 3.3.

4. IMPACT OF SCHEDULING

(Ketamine is not scheduled in one of the drug conventions currently.)

4.1 If ketamine is placed under international control, do you think that its availability for medical use will be affected? (Yes/No)

4.2 If ''yes,'' how do you think that scheduling will impact its medical availability?

3. DEXTROMETHORPHAN pINN

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently authorized as a medical or veterinary product? (Yes/No)

1.2 If ''yes,'' since when has it been on the market?

1.3 Please indicate registered indications alphabetically.

1.4 Please indicate known off-label medical indications for which the substance is also used in your country.

1.5 Please indicate dosage form(s) and strength(s); also indicate special properties like slow release, etc.

Dosage Form	Strength	Remark

1.6 Please indicate brand names alphabetically (no dosage forms, strengths, etc.).

1.7 Are there any technical uses for the substance in your country? If ''yes,'' please specify (Yes/No).

1.8 Is there any other legitimate use of the substance? If ''yes,'' please specify (Yes/No).

[1] Harmful use is defined as a pattern of psychoactive drug use that causes damage to health, either mental or physical. Harmful use of drugs by an individual often has adverse effects on the drug user's family, the community, and society in general.

1.9 If there is a legitimate use of the substance, how is the substance supplied? (Manufactured in the country/Imported/Both)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance used in a harmful way in your country? (Yes/No /Unknown)

2.2 If ''yes,'' any information on how this is used (including route of administration)?

2.3 If ''yes,'' any information on the extent of harmful use?

2.4 If ''yes,'' any information on the extent of public health or social problems associated with the harmful use of the substance (statistics on overdose deaths, dependence, etc.)?

3. CONTROL OF THE SUBSTANCE

3.1 Is the substance controlled under legislation that is intended to regulate availability of substances of abuse (Controlled Substances Act or similar)? (Yes/No)

3.2 If ''yes,'' are there illicit activities involving the substance:

a. clandestine manufacture (Yes/No)

b. smuggling (Yes/No)

c. diversion (Yes/No)

d. other (please specify) (Yes/No)

3.3 Total quantity of seizures (kg/number of tablets/number of ampoules).

3.4 Any additional information with regard to questions 3.2 and 3.3.

4. IMPACT OF SCHEDULING

(Dextromethorphan is not scheduled in one of the drug conventions currently.)

4.1 If dextromethorphan is placed under international control, do you think that its availability for medical use will be affected? (Yes/No)

4.2 If ''yes,'' how do you think that scheduling will impact its medical availability?

4. N-BENZYLPIPERAZINE (BZP)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently authorized as a medical or veterinary product? (Yes/No)

1.2 If ''yes,'' since when has it been on the market?

1.3 Please indicate registered indications alphabetically.

1.4 Please indicate known off-label medical indications for which the substance is also used in your country.

1.5 Please indicate dosage form(s) and strength(s); also indicate special properties like slow release, etc.

Dosage Form	Strength	Remark

1.6 Please indicate brand names alphabetically (no dosage forms, strengths, etc.).

1.7 Are there any technical uses for the substance in your country?

If ''yes,'' please specify(Yes/No).

1.8 Is there any other legitimate use of the substance? If ''yes,'' please specify (Yes/No).

1.9 If there is a legitimate use of the substance, how is the substance supplied? (Manufactured in the country/Imported/Both)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance used in a harmful way in your country? (Yes/No/Unknown)

2.2 If ''yes,'' any information on how this is used (including route of administration)?

2.3 If ''yes,'' any information on the extent of harmful use?

2.4 If ''yes,'' any information on the extent of public health or social problems associated with the harmful use of the substance (statistics on overdose deaths, dependence, etc.)?

3. CONTROL OF THE SUBSTANCE

3.1 Is the substance controlled under legislation that is intended to regulate availability of substances of abuse (Controlled Substances Act or similar)? (Yes/No)

3.2 If ''yes,'' are there illicit activities involving the substance:

a. clandestine manufacture (Yes/No)

b. smuggling (Yes/No)

c. diversion (Yes/No)

d. other (please specify) (Yes/No)

3.3 Total quantity of seizures (kg/number of tablets/number of ampoules).

3.4 Any additional information with regard to questions 3.2 and 3.3.

5. 1-(3-TRIFLUOROMETHYL PHENYL)PIPERAZINE (TFMPP)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently authorized as a medical or veterinary product? (Yes/No)

1.2 If ''yes,'' since when has it been on the market?

1.3 Please indicate registered indications alphabetically.

1.4 Please indicate known off-label medical indications for which the substance is also used in your country.

1.5 Please indicate dosage form(s) and strength(s); also indicate special properties like slow release, etc.

Dosage Form	Strength	Remark

1.6 Please indicate brand names alphabetically (no dosage forms, strengths, etc.).

1.7 Are there any technical uses for the substance in your country? If ''yes,'' please specify(Yes/No).

1.8 Is there any other legitimate use of the substance? If ''yes,'' please specify (Yes/No).

1.9 If there is a legitimate use of the substance, how is the substance supplied? (Manufactured in the country/Imported/Both)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance used in a harmful way in your country? (Yes/No/Unknown)

2.2 If ''yes,'' any information on how this is used (including route of administration)?

2.3 If ''yes,'' any information on the extent of harmful use?

2.4 If ''yes,'' any information on the extent of public health or social problems associated with the harmful use of the substance (statistics on overdose deaths, dependence, etc.)?

3. CONTROL OF THE SUBSTANCE

3.1 Is the substance controlled under legislation that is intended to regulate availability of substances of abuse (Controlled Substances Act or similar)? (Yes/No)

3.2 If yes, are there illicit activities involving the substance:

a. clandestine manufacture (Yes/No)

b. smuggling (Yes/No)

c. diversion (Yes/No)

d. other (please specify) (Yes/No)

3.3 Total quantity of seizures (kg/number of tablets/number of ampoules)

3.4 Any additional information with regard to questions 3.2 and 3.3.

6. 1-(3-CHLOROPHENYL)PIPERAZINE (MCCP)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently authorized as a medical or veterinary product? (Yes/No)

1.2 If ''yes,'' since when has it been on the market?

1.3 Please indicate registered indications alphabetically.

1.4 Please indicate known off-label medical indications for which the substance is also used in your country.

1.5 Please indicate dosage form(s) and strength(s); also indicate special properties like slow release, etc.

Dosage Form	Strength	Remark

1.6 Please indicate brand names alphabetically (no dosage forms, strengths, etc.).

1.7 Are there any technical uses for the substance in your country?

If ''yes,'' please specify (Yes/No).

1.8 Is there any other legitimate use of the substance? If ''yes,'' please specify(Yes/No).

1.9 If there is a legitimate use of the substance, how is the substance supplied? (Manufactured in the country/Imported/Both)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance used in a harmful way in your country? (Yes/No/Unknown)

2.2 If ''yes,'' any information on how this is used (including route of administration)?

2.3 If ''yes,'' any information on the extent of harmful use?

2.4 If ''yes,'' any information on the extent of public health or social problems associated with the harmful use of the substance (statistics on overdose deaths, dependence, etc.)?

3. CONTROL OF THE SUBSTANCE

3.1 Is the substance controlled under legislation that is intended to regulate availability of substances of abuse (Controlled Substances Act or similar)? (Yes/No)

3.2 If yes, are there illicit activities involving the substance:

a. clandestine manufacture (Yes/No)

b. smuggling (Yes/No)

c. diversion (Yes/No)

d. other (please specify) (Yes/No)

3.3 Total quantity of seizures (kg/number of tablets/number of ampoules).

3.4 Any additional information with regard to questions 3.2 and 3.3.

7. 1-(4-METHOXYPHENYL)PIPERAZINE (MeOPP)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently authorized as a medical or veterinary product? (Yes/No)

1.2 If ''yes,'' since when has it been on the market?

1.3 Please indicate registered indications alphabetically.

1.4 Please indicate known off-label medical indications for which the substance is also used in your country.

1.5 Please indicate dosage form(s) and strength(s); also indicate special properties like slow release, etc.

Dosage Form	Strength	Remark

1.6 Please indicate brand names alphabetically (no dosage forms, strengths, etc.).

1.7 Are there any technical uses for the substance in your country? If ''yes,'' please specify (Yes/No).

1.8 Is there any other legitimate use of the substance? If ''yes,'' please specify (Yes/No).

1.9 If there is a legitimate use of the substance, how is the substance supplied? (Manufactured in the country/Imported/Both)

2. ABUSE OF THE SUBSTANCE

2.1 Is the substance used in a harmful way in your country? (Yes/No/Unknown)

2.2 If ''yes,'' any information on how this is used (including route of administration)?

2.3 If ''yes,'' any information on the extent of harmful use?

2.4 If ''yes,'' any information on the extent of public health or social problems associated with the harmful use of the substance (statistics on overdose deaths, dependence, etc.)?

3. CONTROL OF THE SUBSTANCE

3.1 Is the substance controlled under legislation that is intended to regulate availability of substances of abuse (Controlled Substances Act or similar)? (Yes/No)

3.2 If ''yes,'' are there illicit activities involving the substance:

a. clandestine manufacture (Yes/No)

b. smuggling (Yes/No)

c. diversion (Yes/No)

d. other (please specify) (Yes/No)

3.3 Total quantity of seizures (kg/number of tablets/number of ampoules).

3.4 Any additional information with regard to questions 3.2 and 3.3.

8. 1-(3,4-METHYLENEDIOXYBENZYL)PIPERAZINE (MDBP)

1. LEGITIMATE USE OF THE SUBSTANCE

1.1 Is the substance currently authorized as a medical or veterinary product? (Yes/No)

1.2 If ''yes,'' since when has it been on the market?

1.3 Please indicate registered indications alphabetically.

1.4 Please indicate known off-label medical indications for which the substance is also used in your country.

1.5 Please indicate dosage form(s) and strength(s); also indicate special properties like slow release, etc.

Dosage Form	Strength	Remark

Dosage Form	Strength	Remark

1.6 Please indicate brand names alphabetically (no dosage forms, strengths, etc.).
1.7 Are there any technical uses for the substance in your country? If ''yes,'' please specify (Yes/No).
1.8 Is there any other legitimate use of the substance? If ''yes,'' please specify (Yes/No).
1.9 If there is a legitimate use of the substance, how is the substance supplied? (Manufactured in the country/Imported/Both)
2. ABUSE OF THE SUBSTANCE
2.1 Is the substance used in a harmful way in your country? (Yes/No/Unknown)
2.2 If ''yes,'' any information on how this is used (including route of administration)?
2.3 If ''yes,'' any information on the extent of harmful use?
2.4 If ''yes,'' any information on the extent of public health or social problems associated with the harmful use of the substance (statistics on overdose deaths, dependence, etc.)?
3. CONTROL OF THE SUBSTANCE
3.1 Is the substance controlled under legislation that is intended to regulate availability of substances of abuse (Controlled Substances Act or similar)? (Yes/No)
3.2 If yes, are there illicit activities involving the substance:
a. clandestine manufacture (Yes/No)
b. smuggling (Yes/No)
c. diversion (Yes/No)
d. other (please specify) (Yes/No)
3.3 Total quantity of seizures (kg/number of tablets/number of ampoules).
3.4 Any additional information with regard to questions 3.2 and 3.3.

9. GAMMA-BUTYROLACTONE

1. LEGITIMATE USE OF THE SUBSTANCE
1.1 Is the substance currently authorized as a medical or veterinary product? (Yes/No)
1.2 If ''yes,'' since when has it been on the market?
1.3 Please indicate registered indications alphabetically.
1.4 Please indicate known off-label medical indications for which the substance is also used in your country.
1.5 Please indicate dosage form(s) and strength(s); also indicate special properties like slow release, etc.

Dosage Form	Strength	Remark

1.6 Please indicate brand names alphabetically (no dosage forms, strengths, etc.).
1.7 Are there any technical uses for the substance in your country? If ''yes,'' please specify. (Yes/No)
1.8 Is there any other legitimate use of the substance? If ''yes,'' please specify (Yes/No).
1.9 If there is a legitimate use of the substance, how is the substance supplied? Manufactured in the country/Imported/Both)
2. ABUSE OF THE SUBSTANCE
2.1 Is the substance used in a harmful way in your country? (Yes/No/Unknown)
2.2 If ''yes,'' any information on how this is used (including route of administration)?
2.3 If ''yes,'' any information on the extent of harmful use?
2.4 If ''yes,'' any information on the extent of public health or social problems associated with the harmful use of the substance (statistics on overdose deaths, dependence, etc.)?
3. CONTROL OF THE SUBSTANCE
3.1 Is the substance controlled under legislation that is intended to regulate availability of substances of abuse (Controlled Substances Act or similar)? (Yes/No)
3.2 If yes, are there illicit activities involving the substance:
a. clandestine manufacture (Yes/No)
b. smuggling (Yes/No)
c. diversion (Yes/No)
d. other (please specify) (Yes/No)
3.3 Total quantity of seizures (kg/liter).
3.4 Any additional information with regard to questions 3.2 and 3.3.

10. 1,4-BUTANEDIOL

1. LEGITIMATE USE OF THE SUBSTANCE
1.1 Is the substance currently authorized as a medical or veterinary product? (Yes/No)
1.2 If ''yes,'' since when has it been on the market?
1.3 Please indicate registered indications alphabetically.
1.4 Please indicate known off-label medical indications for which the substance is also used in your country.
1.5 Please indicate dosage form(s) and strength(s); also indicate special properties like slow release, etc.

Dosage Form	Strength	Remark

1.6 Please indicate brand names alphabetically (no dosage forms, strengths, etc.).
1.7 Are there any technical uses for the substance in your country? If ''yes,'' please specify (Yes/No).
1.8 Is there any other legitimate use of the substance? If ''yes,'' please specify (Yes/No).
1.9 If there is a legitimate use of the substance, how is the substance supplied? (Manufactured in the country/Imported/Both)
2. ABUSE OF THE SUBSTANCE
2.1 Is the substance used in a harmful way in your country? (Yes/No/Unknown)
2.2 If ''yes,'' any information on how this is used (including route of administration)?
2.3 If ''yes,'' any information on the extent of harmful use?

2.4 If ''yes,'' any information on the extent of public health or social problems associated with the harmful use of the substance (statistics on overdose deaths, dependence, etc.)?

3. CONTROL OF THE SUBSTANCE

3.1 Is the substance controlled under legislation that is intended to regulate availability of substances of abuse (Controlled Substances Act or similar)? (Yes/No)

3.2 If yes, are there illicit activities involving the substance:

a. clandestine manufacture (Yes/No)

b. smuggling (Yes/No)

c. diversion (Yes/No)

d. other (please specify) (Yes/No)

3.3 Total quantity of seizures (kg/liter).

3.4 Any additional information with regard to questions 3.2 and 3.3.

II. Background

Gamma-hydroxybutyric acid (GHB) is classified as a central nervous system depressant. In 2002, FDA approved a GHB-containing product, Xyrem, for the treatment of cataplexy associated with narcolepsy. Xyrem was approved under the regulations in 21 CFR 314.520, and the product labeling contained a comprehensive risk management program, which includes restricted distribution of the drug through a central pharmacy. Xyrem is controlled domestically in Schedule III of the CSA, while bulk GHB and all other material containing GHB is controlled in Schedule I. In addition, illicit use of Xyrem is subject to Schedule I penalties of the CSA. GHB is controlled internationally in Schedule IV of the Psychotropic Convention. The WHO Expert Committee on Drug Dependence pre-reviewed GHB at its thirty-fourth meeting and recommended it for critical review at a future meeting.

Ketamine is classified as a rapid-acting general anesthetic agent used for short diagnostic and surgical procedures that do not require skeletal muscle relaxation. It is marketed in the United States as an injectable. Ketamine is controlled domestically in Schedule III of the CSA. It is not controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs. The WHO Expert Committee on Drug Dependence reviewed ketamine at its thirty-fourth meeting, and recommended that the Secretariat produce an updated version of the critical review for ketamine and present it to the next meeting of the WHO Expert Committee on Drug Dependence.

Dextromethorphan is classified as an oral antitussive agent for treating uncomplicated, nonproductive coughs. It is marketed in the United States without a prescription in mixtures such as syrups, lozenges, or in combination with antihistamines. Dextromethorphan is not controlled domestically or controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs.

N-benzylpiperazine (BZP) is used as an intermediate in chemical synthesis, but has been taken orally as either powder or tablets and by other routes including smoking or snorting. It has no medical use in the United States. BZP is controlled domestically in Schedule I of the CSA. BZP is not controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs.

1-(3-trifluoromethylphenyl)piperazine (TFMPP) is a piperazine-based serotonin receptor agonist. It has no medical use in the United States. TFMPP is not controlled domestically or controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs.

1-(3-chlorophenyl)piperazine (mCPP) is a piperazine-based serotonin receptor agonist. It has no medical use in the United States. mCPP is not controlled domestically or controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs.

1-(4-Methoxyphenyl)piperazine (MeOPP) is a piperazine-based derivative. It has no medical use in the United States. MeOPP is not controlled domestically or controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs.

1-(3,4-methylenedioxybenzyl)piperazine (MDBP) is a piperazine derivative with no medical use in the United States. It is not controlled domestically or controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs.

Gamma-butyrolactone (GBL) is used as a solvent and reagent in chemistry. GBL can be used in the synthesis of GHB, and can be converted to the central nervous system depressant drug Gamma-hydroxybutyric acid (GHB) in the body after ingestion. As a precursor in the manufacture of GHB, GBL is controlled domestically as a List I chemical in the United States under the CSA. It is not controlled internationally under the Psychotropic Convention or the Single Convention on Narcotic Drugs.

1,4-Butanediol is used as an industrial solvent for manufacturing and also used for the synthesis of GBL. After ingestion, 1,4-Butanediol can also be converted to the central nervous depressant drug GHB. It has no medical use in the United States. 1,4-Butanediol is not controlled domestically under the CSA in the United States, but is subject to controls in several states under State law.

III. Opportunity to Submit Domestic Information

As required by section 201(d)(2)(A) of the CSA (21 U.S.C. 811(d)(2)(A)), FDA, on behalf of HHS, invites interested persons to submit comments regarding the 10 named drugs. HHS will consider any received comments when it prepares a scientific and medical evaluation of these drugs. HHS will forward a scientific and medical evaluation of these drugs to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend international control/decontrol of any of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs and could impose certain recordkeeping requirements on them.

HHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, HHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in early 2010. Any HHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comments as required by section 201(d)(2)(B) of the CSA.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the drugs by (see **DATES**). This abbreviated comment period is necessary to allow sufficient time to prepare and submit the domestic information package by the deadline imposed by WHO. Two paper copies of any comments are to be submitted, 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.

Dated: August 22, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–20564 Filed 9–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 23, 2008, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/ Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Diem-Kieu Ngo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: Diem.Ngo@fda.hhs.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572) in the Washington, DC area), code 3014512543. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The Committee will discuss the clinical development of radionuclide imaging products for the detection of amyloid to assist in the diagnosis of Alzheimer's Disease.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 8, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 30, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 1, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Diem-Kieu Ngo at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 27, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–20577 Filed 9–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369] (formerly Docket No. 2007D–0168)

Publication of Guidances for Industry Describing Product-Specific Bioequivalence Recommendations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of additional draft and revised draft product-specific bioequivalence (BE) recommendations. The recommendations provide product-specific guidance on the design of BE studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of May 31, 2007 (72 FR 30388), FDA announced the availability of a draft guidance for industry, ''Bioequivalence Recommendations for Specific Products,'' explaining the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site. The BE recommendations identified in this notice were developed using the process described in that guidance.

DATES: Submit written or electronic comments on the draft product-specific BE recommendations listed in this notice by December 4, 2008.

ADDRESSES: Submit written requests for single copies of the individual BE guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft product-specific BE recommendations to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the

SUPPLEMENTARY INFORMATION section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Doan T. Nguyen, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9314.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 31, 2007 (72 FR 30388), FDA announced the availability of a draft guidance for industry, ''Bioequivalence Recommendations for Specific Products,'' that explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/CDER/GUIDANCE/bioequivalence/default.htm*. As described in that draft guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. Since that notice was published we have published a correction notice concerning Bioequivalence Recommendations for Specific Products on October 25, 2007 (72 FR 60683). This notice includes draft product-specific recommendations either newly posted or updated since the **Federal Register** notice dated October 25, 2007, through April 30, 2008.

II. Drug Products for Which New Draft Product-Specific BE Recommendations Are Available

The following draft BE product-specific recommendations have been newly posted since the FR notice dated October 25, 2007:

(1) Abacavir Sulfate; Lamivudine
(2) Alendronate Sodium
(3) Alfuzosin HCl
(4) Alprazolam
(5) Amoxicillin; Clavulanate Potassium (multiple RLDs)
(6) Amprenavir
(7) Aripiprazole
(8) Armodafinil
(9) Atovaquone
(10) Azithromycin
(11) Balsalazide Disodium
(12) Bupropion HCl (updated)
(13) Carbamazepine (multiple dosage forms)
(14) Cefdinir
(15) Cefixime
(16) Cetirizine HCl; Pseudoephedrine HCl
(17) Ciprofloxacin; Ciprofloxacin HCl
(18) Ciprofloxacin HCl
(19) Clarithromycin
(20) Darunavir Ethanolate
(21) Delavirdine Mesylate
(22) Dexmethylphenidate
(23) Diltiazem HCl (multiple dosage forms; multiple RLDs)
(24) Divalproex Sodium
(25) Doxycycline (multiple dosage forms)
(26) Eprosartan Mesylate; Hydrochlorothiazide
(27) Esterified Estrogens
(28) Eszopiclone
(29) Ethambutol HCl
(30) Ethinyl Estradiol; Levonorgestrel (multiple RLDs)
(31) Fenofibrate
(32) Fluvastatin Sodium (multiple dosage forms)
(33) Fosamprenavir Calcium
(34) Glimepiride; Rosiglitazone Maleate
(35) Lamivudine
(36) Linezolid
(37) Lisinopril
(38) Lopinavir; Ritonavir
(39) Memantine HCl
(40) Mesalamine
(41) Metoprolol Succinate (updated)
(42) Minocycline HCl
(43) Nelfinavir Mesylate
(44) Nevirapine
(45) Omeprazole; Sodium Bicarbonate; Magnesium Hydroxide
(46) Oxymorphone HCl (multiple dosage forms)
(47) Paliperidone
(48) Paricalcitol
(49) Phenytoin
(50) Pimozide
(51) Posaconazole
(52) Quinine Sulfate
(53) Saquinavir Mesylate (multiple dosage forms)
(54) Solifenacin Succinate
(55) Tenofovir Disoproxil Fumarate
(56) Tinidazole
(57) Tipranavir
(58) Tolterodine Tartrate
(59) Tramadol HCl
(60) Trospium Chloride
(61) Varenicline Tartrate
(62) Zafirlukast
(63) Zalcitabine
(64) Zileuton
(65) Zolmitriptan
(66) Zonisamide

III. Drug Products for Which Updated Draft Product-Specific BE Recommendations Are Available

The following five product-specific recommendations previously made available on FDA's Web site have been updated:

1. Risedronate Sodium
2. Fosinopril Sodium; Hydrochlorothiazide
3. Fluoxetine HCl; Olanzapine
4. Erlotinib HCl
5. Morphine Sulfate

For a complete history of previous **Federal Register** notices pertaining to product-specific BE recommendations, please go to *http://www.regulations.gov* and enter FDA–2007–D–0369.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on any of the specific BE recommendations posted on FDA's Web site. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance, notices, and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only at *http://www.regulations.gov*.

V. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.regulations.gov*.

Dated: August 27, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–20580 Filed 9–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0450]

Science Board to the Food and Drug Administration; Request for Nominations SUBJECT≤

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is requesting nominations to serve on the Science Board to the FDA (Science Board).

FDA has special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations qualified candidates from these groups.

DATES: Nominations received on or before October 6, 2008 will be given first consideration for membership on the Science Board. Nominations received after October 6, 2008 will be considered for nomination to the Science Board should nominees still be needed.

ADDRESSES: All nomination for membership should be sent electronically to *CV@OC.FDA.GOV*, or by mail to Advisory Committee Oversight & Management Staff, 5600 Fishers Lane (HF–4), rm. 15A–12, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding all nomination questions for membership, the primary contact is Carlos Peña, Office of Science and Health Coordination, Office of the Commissioner, Food and Drug Administration (HF–33), 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, e-mail: *carlos.Peña@fda.hhs.gov*. Information about becoming a member on a FDA advisory committee can also be obtained by visiting FDA's Web site by using the following link *http://www.fda.gov/oc/advisory/default.htm*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations to the Science Board. The Science Board will meet approximately four times a year. Meetings of the Science Board will be open to the public. All meetings will be announced in the **Federal Register** at least 15 days prior to each scheduled public meeting.

I. General Function of the Committee

The Science Board shall provide advice primarily to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community. Additionally, the Science Board will provide advice to the Agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of Agency sponsored intramural and extramural scientific research programs.

II. Criteria for Members

Persons nominated for membership shall be knowledgeable in the fields of food safety, nutrition, chemistry, pharmacology, toxicology, clinical research, or other scientific disciplines such as systems biology, wireless healthcare devices, nanotechnology, medical imaging, robotics, cell and tissue based products, regenerative medicine, and combination products. Members shall be chosen from academia and industry. The Science Board may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. The Science Board may also include technically qualified Federal members.

III. Nomination Procedures

Any interested person may nominate one or more qualified person for membership on the Science Board. Self nominations are also accepted. Nominations shall include the name of the committee, complete curriculum vitae of each nominee, and their current business address and telephone number and e-mail address if available. Each nomination shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: August 27, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–20574 Filed 9–4–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 Center for Complementary and Alternative Medicine, Special Emphasis Panel, Exploratory Grants for CAM Studies of Humans (R21).

Date: October 20–21, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Officer, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–9096, *jeanettehmail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine, Special Emphasis Panel, Basic and Preclinical Research on CAM.

Date: October 27–28, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Gaithersburg, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Peter Kozel, PhD, Scientific Review Officer, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, 301–496–8004, *kozelpmail.nih.gov.*

Dated: August 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20626 Filed 9–4–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Collection of Overpayments

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This document provides notice that the Federal Emergency Management Agency (FEMA) has terminated the current procedures for the recoupment of overpayments of disaster assistance made pursuant to Section 408 of the Stafford Act, in connection with Hurricanes Katrina and Rita. Recoupment notices previously

sent to individual disaster applicants in connection with Hurricanes Katrina and Rita are hereby withdrawn. FEMA will institute new recoupment proceedings where warranted on an individual basis pursuant to the procedures established by regulation for the administrative collection of debts.

FOR FURTHER INFORMATION CONTACT: John Quintanilla, Federal Emergency Management Agency, Department of Homeland Security, Virginia National Processing Services Center, P.O. Box 2297, Winchester, VA 22604, telephone (540) 686–3603 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Notice: FEMA provided financial disaster assistance to individuals in connection with Hurricanes Katrina and Rita pursuant to Section 408 of the Stafford Act, 42 U.S.C. 5174. Some individual disaster applicants received assistance for which they were not eligible, or received amounts of assistance greater than that for which they were eligible. In many of those instances, FEMA instituted recoupment proceedings to recover those overpayments.

FEMA hereby provides notice that the recoupment of overpayments of such disaster assistance conducted pursuant to the former procedures governing recoupment, including those set forth at 44 CFR part 11, are permanently terminated. Pursuant to this determination, all recoupment notices previously sent to individual disaster applicants in connection with Hurricanes Katrina and Rita, as well as any subsequent correspondence regarding recoupment, are hereby withdrawn. This notice does not cancel valid debts of disaster applicants from Hurricanes Katrina and Rita; it terminates the former procedures under which FEMA recouped such debts.

FEMA will reexamine *de novo* the files of individual disaster applicants for evidence of overpayment. In instances where FEMA determines that recoupment is still warranted based on such review, FEMA will institute new recoupment proceedings pursuant to the procedures set forth at 6 CFR part 11 (adopting general procedures for administrative collection of debts set forth at 31 CFR parts 900–904), and will transmit new recoupment notices explaining the rights and obligations of persons who are determined to have received overpayments.

Individuals otherwise covered by this Notice who have previously entered into negotiated or voluntary payment plans with FEMA may continue to make payments under such plans, or may elect to stop making payments. In either event, consistent with its generally applicable policy, FEMA will reexamine *de novo* such individuals' files and, where appropriate, institute new recoupment proceedings as to any remaining debt balances pursuant to the procedures set forth at 6 CFR part 11.

Authority

Legal authority for recoupment is the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*

Dated: August 29, 2008..

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20587 Filed 9–4–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2001–11120]

Extension of Agency Information Collection Activity Under OMB Review: Imposition and Collection of Passenger Civil Aviation Security Service Fees

AGENCY: Transportation Security Administration, DHS.

ACTION: 30 Day Notice.

SUMMARY: The Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652–0001, abstracted below, to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on July 2, 2008, 73 FR 37981. The collection involves air carriers maintaining an accounting system to account for the passenger civil aviation security service fees collected and reporting this information to TSA on a quarterly basis, as well as retaining the data used for these reports for a six-year rolling period.

DATES: Send your comments by October 6, 2008. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–3651; facsimile (703) 603–0822.

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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Imposition and Collection of Passenger Civil Aviation Security Service Fees.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0001.

Form(s): N/A.

Affected Public: Air Carriers.

Abstract: To help defray aviation security costs, TSA imposed the September 11th Security Service Fee on passengers of air carriers and foreign air carriers. 49 CFR 1510. Air carriers are required to collect the fee from passengers and to submit the fee to TSA by a certain date. Airlines are further

required to submit quarterly reports to TSA that provide an accounting of the fees imposed, collected, refunded to passengers, and remitted to TSA. An additional requirement for airlines with over 50,000 passengers to submit annual audits of its fee collections and remittance has been temporarily suspended, but may in the future be reinstated. This information collection request covers both the quarterly reports and the annual audits.

Number of Respondents: 196.

Estimated Annual Burden Hours: An estimated 2,884 hours annually.

Issued in Arlington, Virginia, on September 2, 2008.

Kriste Jordan,

Program Manager, Business Improvements and Communications, Office of Information Technology.

[FR Doc. E8–20649 Filed 9–4–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request Entry and Immediate Delivery Application

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0024.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Immediate Delivery Application. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before November 4, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the 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. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Entry and Immediate Delivery Application.

OMB Number: 1651–0024.

Form Number: CBP Form–3461 and Form–3461 Alternate.

Abstract: The Entry and Immediate Delivery Applications are used by importers to provide CBP with the necessary information in order to examine and release imported cargo.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 13,324.

Estimated Number of Responses: 18,654,229.

Estimated Average Time per Response: 9 minutes.

Estimated Total Annual Burden Hours: 2,775,043.

Dated: August 18, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–20658 Filed 9–4–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request Prior Disclosure Regulations

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0074.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Prior Disclosure Regulations. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before November 4, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the 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. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Prior Disclosure Regulations.

OMB Number: 1651–0074.

Form Number: N/A.

Abstract: This collection of information is required to implement a provision of the Customs Modernization portion of the North American Free Trade Implementation Act concerning prior disclosure by a person, of a violation of law committed by that person, involving the entry or introduction of merchandise into the United States by fraud, gross negligence or negligence, pursuant to 19 U.S.C. 1592(c)(4), as amended.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 3,500.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 3,500.

Dated: August 18, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–20661 Filed 9–4–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

Name	License No.	Issuing port
International Cargo Systems, Inc	15594	Boston
Delmar Logistics, Inc	17142	Los Angeles
Robert D. Hancock, Jr.	03755	Houston
Rialto International, Inc	22077	Seattle

Dated: August 18, 2008.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E8–20676 Filed 9–4–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License Due to Death of the License Holder

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

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker license and any and all permits have been cancelled due to the death of the broker:

Name	License No.	Port name
Lynn L. Wensveen	21714	Great Falls

Dated: August 18, 2008.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E8–20677 Filed 9–4–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Chem Gas International LLC, as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Chem Gas International LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Chem Gas International LLC, 12002 Highway 146, Dickinson, TX 77539, has been approved to gauge and accredited to test petroleum and petroleum products and organic chemicals for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Chem Gas International LLC, as commercial gauger and laboratory became effective on August 15, 2008. The next triennial inspection date will be scheduled for August 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 25, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–20678 Filed 9–4–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–36]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Commandant (G–SEC), USCG, Attn: Melissa Evans, 1900 Half St., SW., CG–431, Washington, DC 20593; (202) 475–5628; *GSA:* Mr. John Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., Washington, DC 20240; (202) 208–5399; (These are not toll-free numbers).

Dated: August 28, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 09/05/2008

Suitable/Available Properties

Building

Washington

Bldg. 127
Yakima Project
1917 Marsh Road
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200630015
Status: Excess
Comments: 1152 sq. ft., most recent use—office, off-site use only

Bldg. 133
Yakima Project
1917 Marsh Road
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200630016
Status: Excess
Comments: 1680 sq. ft., most recent use—office, off-site use only

Residence
Riverside Road
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200710010
Status: Unutilized
Comments: 756 sq. ft., off-site use only

Suitable/Available Properties

Building

Washington

Bldg. 1933
50 Acre Drive
Eltopia WA 99330
Landholding Agency: Interior
Property Number: 61200720006
Status: Unutilized
Comments: 709 sq. ft., most recent use—residence, possible asbestos/lead paint, off-site use only

Bldg. 1933g
50 Acre Drive
Eltopia WA 99330
Landholding Agency: Interior
Property Number: 61200720007
Status: Unutilized

Comments: 264 sq. ft., most recent use—garage, possible asbestos/lead paint, off-site use only

Bldg. 1934
40 Acre Drive
Eltopia WA
Landholding Agency: Interior
Property Number: 61200720008
Status: Unutilized
Comments: 709 sq. ft., most recent use—residence, possible asbestos/lead paint, off-site use only

Bldg. 1934g
40 Acre Drive
Eltopia WA 99330
Landholding Agency: Interior
Property Number: 61200720009
Status: Unutilized
Comments: 264 sq. ft., most recent use—garage, possible asbestos/lead paint, off-site use only

Suitable/Available Properties

Land

New Mexico

Portion
Griegos Drain
Albuquerque NM 87104
Landholding Agency: Interior
Property Number: 61200820002
Status: Unutilized
Comments: 0.0656 acres, encroachment, limited access

Suitable/Unavailable Properties

Building

Colorado

Federal Building
1520 E. Willamette St.
Colorado Springs Co: El Paso CO 80909
Landholding Agency: GSA
Property Number: 54200640004
Status: Excess
GSA Number: 7–G–CO–0660
Comments: 50,363 sq. ft., needs major rehab, available in approx. 24 months, legal constraints, published incorrectly on 8/15/08 as available

Suitable/Unavailable Properties

Building

Oklahoma

Maintenance Site
Rt. 1
Tupelo OK 74572
Landholding Agency: GSA
Property Number: 54200820016
Status: Excess
GSA Number: 7–GR–OK–0574
Comments: office/garage/storage, easement restrictions, published incorrectly on 8/15/2008 as available

Land

Texas

FAA Outer Marker 18 R/L VYN
1420 Lakeside Pkwy
Flower Mound TX 75028
Landholding Agency: GSA
Property Number: 54200820017
Status: Surplus
GSA Number: 7–U–TX–1090
Comments: 1.428 acres, radar facility, published incorrectly on 8/15/08 as available

FAA Outer Marker 31R RAA
1600 Cooper Drive
Irving TX 75061
Landholding Agency: GSA
Property Number: 54200820018
Status: Surplus
GSA Number: 7–U–TX–1095
Comments: 0.305 acre, radar facility, published incorrectly on 8/15/08 as available

Suitable/Unavailable Properties

Land

Texas

FAA Outer Marker 35R AJQ
300 W. Shady Grove
Grand Prairie TX 75050
Landholding Agency: GSA
Property Number: 54200820019
Status: Surplus
GSA Number: 7–U–TX–1094
Comments: 0.674 acre, radar facility, published incorrectly on 8/15/08 as available

Unsuitable Properties

Building

Alaska

Radar Tower
Potato Point Comm Site
Valdez AK
Landholding Agency: Coast Guard
Property Number: 88200710001
Status: Excess
Reasons: Not accessible by road Within 2000 ft. of flammable or explosive material Secured Area

Unsuitable Properties

Building

Alaska

Bldg. 12B
Integrated Support Command
Kodiak AK
Landholding Agency: Coast Guard
Property Number: 88200810003
Status: Excess
Reasons: Extensive deterioration Secured Area Within 2000 ft. of flammable or explosive material

Bldg. 554
Integrated Support Command
Kodiak AK
Landholding Agency: Coast Guard
Property Number: 88200810004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. B02
USCG DGPS
Annette Island AK 99926
Landholding Agency: Coast Guard
Property Number: 88200820001
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Alaska

Bldg. B02
USCG DGPS
Gustavus AK 99826
Landholding Agency: Coast Guard
Property Number: 88200820002
Status: Excess
Reasons: Secured Area

Arizona

Bldg. 1509
National Park
Grand Canyon AZ 86023
Landholding Agency: Interior
Property Number: 61200740002
Status: Unutilized
Reasons: Extensive deterioration

California

Bldg. 800
National Park
Yosemite CA 95389
Landholding Agency: Interior
Property Number: 61200740003
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

California

Bldg. 19
USCG Integrated Sup Comm
San Pedro CA 90731
Landholding Agency: Coast Guard
Property Number: 88200820004
Status: Unutilized
Reasons: Extensive deterioration

Colorado

Bldg. 988
Rocky Mtn Natl Park
Estes Park CO 80517
Landholding Agency: Interior
Property Number: 61200820003
Status: Unutilized
Reasons: Extensive deterioration

Florida

Bldgs. 421, 422
Everglades National Park
Flamingo District
Monroe FL
Landholding Agency: Interior
Property Number: 61200720012
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Florida

Bldg. 701
Everglades National Park
Chekika
Monroe FL
Landholding Agency: Interior
Property Number: 61200720018
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 714A, 717
Everglades National Park
Chekika

Monroe FL
Landholding Agency: Interior
Property Number: 61200720019
Status: Unutilized
Reasons: Extensive deterioration

Waste Water Treatment Plant
Everglades National Park
Chekika
Monroe FL
Landholding Agency: Interior
Property Number: 61200720020
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Idaho

8 Buildings
Palmer Residence
Montour ID
Landholding Agency: Interior
Property Number: 61200730004
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 4
Spalding Ave/Watson Store Rd
Spalding ID 83540
Landholding Agency: Interior
Property Number: 61200820001
Status: Excess
Reasons: Extensive deterioration

Massachusetts

Bldg. 5202
USCG Air Station
Bourne MA 02540
Landholding Agency: Coast Guard
Property Number: 88200810002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Unsuitable Properties

Building

Michigan

Admin. Bldg.
Station Saginaw River
Essexville Co: Bay MI 48732
Landholding Agency: Coast Guard
Property Number: 88200510001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Minnesota

House
Glacial Ridge
13997 Hwy 2W
Red Lake Falls MN
Landholding Agency: Interior
Property Number: 61200720004
Status: Excess
Reasons: Extensive deterioration

North Carolina

RPFN 0S1
Group Cape Hatteras
Buxton Co: Dare NC 27902
Landholding Agency: Coast Guard
Property Number: 88200540001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Unsuitable Properties

Building

North Carolina

RPFN 053
Sector NC
Atlantic Beach Co: Carteret NC 28512
Landholding Agency: Coast Guard
Property Number: 88200540002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Equip. Bldg.
Coast Guard Station
11101 Station St.
Emerald Isle NC
Landholding Agency: Coast Guard
Property Number: 88200630001
Status: Unutilized
Reasons: Secured Area

Ohio

Naval Reserve Center
Cleveland OH 44114
Landholding Agency: Coast Guard
Property Number: 88200740002
Status: Unutilized
Reasons: Within airport runway clear zone Secured Area Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

Puerto Rico

Sectors #42, #44
Natl Historic Site
San Miguel PR
Landholding Agency: Interior
Property Number: 61200740004
Status: Unutilized
Reasons: Extensive deterioration

Virginia

Bldgs. 325, 321
Skyline Drive
Luray Co: Page VA 22835
Landholding Agency: Interior
Property Number: 61200710008
Status: Excess
Reasons: Extensive deterioration

Martin House
Tract 07–101
Dinwiddie VA 23841
Landholding Agency: Interior
Property Number: 61200820005
Status: Excess
Reasons: Extensive deterioration

Quarters #50
1541 Hickory Hill Road
Petersburg VA 23803
Landholding Agency: Interior
Property Number: 61200820006
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties

Building

Virginia

Davis House
Tract 01–137
Petersburg VA 23803
Landholding Agency: Interior
Property Number: 61200820007
Status: Excess
Reasons: Extensive deterioration

Training Bldg.
USCG Integrated Support Ctr
Portsmouth Co: Norfolk VA 43703
Landholding Agency: Coast Guard
Property Number: 88200530001
Status: Excess
Reasons: Secured Area

Bldg. 011
Integrated Support Center
Portsmouth Co: Norfolk VA 43703
Landholding Agency: Coast Guard
Property Number: 88200620002
Status: Excess
Reasons: Secured Area

9 Bldgs.
USCG Cape Charles Station
Winters Quarters
Northampton VA 23310
Landholding Agency: Coast Guard
Property Number: 88200740001
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Virginia

Navigation Center Trailer
USCG TISCOM
Alexandria VA 22315
Landholding Agency: Coast Guard
Property Number: 88200820003
Status: Excess
Reasons: Secured Area

Washington

Bldg. 128
Yakima Project
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200630018
Status: Excess
Reasons: Extensive deterioration

Bldgs. 0304, 0305
22416 Road F NE
Soap Lake Co: Grant WA 98851
Landholding Agency: Interior
Property Number: 61200640003
Status: Excess
Reasons: Extensive deterioration

Bldgs. 0801, 0804
Frontage Road
West Quincy Co: Grant WA 98848
Landholding Agency: Interior
Property Number: 61200640004
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties

Building

Washington

Bldgs. 1202, 1203
S. Maple
Warden Co: Grant WA 98857
Landholding Agency: Interior
Property Number: 61200640005
Status: Excess
Reasons: Extensive deterioration

Bldgs. 1702, 1707
Highway Heights
Mesa Co: Franklin WA 99343
Landholding Agency: Interior
Property Number: 61200640006

Status: Excess
Reasons: Extensive deterioration

Bldg. 1806
Klamath Road
Mesa Co: Franklin WA 99343
Landholding Agency: Interior
Property Number: 61200640007
Status: Excess
Reasons: Extensive deterioration

Bldg. 134
North Cascades Natl Park
Stehekin Co: Chelan WA 98852
Landholding Agency: Interior
Property Number: 61200710009
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Washington

Bldg. 9470–0009
North Cascades Natl Park
Stehekin Co: Chelan WA
Landholding Agency: Interior
Property Number: 61200720003
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 62, 63
Yakima WA 98944
Landholding Agency: Interior
Property Number: 61200740005
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
74, 75, 77, 78, 79
Yakima WA 98944
Landholding Agency: Interior
Property Number: 61200740006
Status: Unutilized
Reasons: Extensive deterioration

Residence 0033008500
Kennewick WA 99338
Landholding Agency: Interior
Property Number: 61200820008
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Wisconsin

Bldg. OV1
USCG Station
Bayfield WI 54814
Landholding Agency: Coast Guard
Property Number: 88200620001
Status: Excess
Reasons: Secured Area

Land

California

0.038 acre
Ortega Reservoir
Summerland CA 93067
Landholding Agency: Interior
Property Number: 61200710012
Status: Unutilized
Reasons: Other—inaccessible

Colorado

0.04 acres
Vega Reservoir
Collbran CO 81624
Landholding Agency: Interior
Property Number: 61200720001
Status: Excess
Reasons: Other—right-of-way

Unsuitable Properties

Land

Utah

0.47 acre
Feeder Canal
Hyrum UT 84319
Landholding Agency: Interior
Property Number: 61200740007
Status: Excess
Reasons: Other—landlocked

0.47 acre
Hyrum Feeder Canal
Hyrum UT 84319
Landholding Agency: Interior
Property Number: 61200820004
Status: Excess
Reasons: Other—landlocked

[FR Doc. E8–20463 Filed 9–4–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14842–B2, F–14851–B2; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to NANA Regional Corporation, Inc. The lands are in the vicinity of Buckland and Deering, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 6 N., R. 11 W.,
Secs. 19, 30, and 31.

Containing approximately 1,872 acres.

T. 7 N., R. 13 W.,
Secs. 24, 25 and 26.

Containing approximately 1,920 acres.

T. 6 N., R. 19 W.,
Secs. 1, 2, and 3; Secs. 10 to 13, inclusive.

Containing approximately 4,480 acres.

T. 7 N., R. 20 W.,
Sec. 13; Secs. 22 to 28, inclusive; Secs. 33 to 36, inclusive.

Containing approximately 7,680 acres.

T. 6 N., R. 21 W.,
Secs. 2 to 6, inclusive; Secs. 8 to 11, inclusive; Secs. 14 to 17, inclusive; Secs. 20, 21, 22 and 36.

Containing approximately 10,855 acres.

Aggregating approximately 26,807 acres.

Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until October 6, 2008, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–20593 Filed 9–4–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1310–DT–OSHL]

Notice of Availability of Proposed Oil Shale and Tar Sands Resource Management Plan Amendments To Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA).

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Energy Policy Act of 2005 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared the Proposed Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming (PRMP Amendments) and

Final Programmatic Environmental Impact Statement (FPEIS).

DATES: As required by the NEPA, the EPA will publish a Notice in the **Federal Register** announcing the availability of the FPEIS. The BLM will wait at least 60 days after the publication of the EPA's Notice before signing and issuing the Record of Decision (ROD) approving the plan amendments.

ADDRESSES: Copies of the PRMP Amendments and FPEIS have been sent to affected Federal, state, and local government agencies and to interested parties. Paper and electronic (CD–ROM) copies of the PRMP Amendments and FPEIS are available at the following BLM locations:

- Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215.
- Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101.
- Wyoming State Office, 5353 Yellowstone, Cheyenne, WY 82009.
- Vernal Field Office, 170 South 500 East, Vernal, UT 84078.
- Price Field Office, 125 South 600 West, Price, UT 84501.
- Richfield Field Office, 150 East 900 North, Richfield, UT 84701.
- Monticello Field Office, 435 North Main, P.O. Box 7, Monticello, UT 84535.
- White River Field Office, 220 E. Market Street, Meeker, CO 81641.
- Glenwood Springs Field Office, 2425 S. Grand Ave., Suite 101, Glenwood Springs, CO 81601.
- Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506.
- Kemmerer Field Office, 312 Highway 189 North, Kemmerer, WY 83101.
- Rawlins Field Office, at 1300 North Third, P.O. Box 2407, Rawlins, WY 82301.
- Rock Springs Field Office, 280 Highway 191 North, Rock Springs, WY 82901.

Interested persons may also review the PRMP Amendments and FPEIS on the Internet at *http://ostseis.anl.gov*.

FOR FURTHER INFORMATION CONTACT: Sherri Thompson, BLM Project Manager, at (303) 239–3758, (*sherri_thompson@blm.gov*), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215 or Mitchell Leverette, BLM Division Chief, Solid Minerals, at (202) 452–5088, (*mitchell_leverette@blm.gov*), Bureau of Land Management, 1620 L Street, NW., Washington DC 20036.

SUPPLEMENTARY INFORMATION: The Oil Shale and Tar Sands Resources PRMP Amendments and FPEIS are being prepared to meet the requirements established by Congress in Section 369 of the Energy Policy Act of 2005, the National Environmental Policy Act of 1969, and the Federal Land Policy Management Act of 1976. It evaluates the amendment of 12 resource management plans to designate lands as available for application for commercial leasing of oil shale and tar sands resources on public lands in Colorado, Utah, and Wyoming managed by the BLM. Specifically, the FPEIS evaluates amendments of nine land use plans to designate lands as available for commercial oil shale leasing and amendment of six lands use plans to designate lands as available for commercial tar sands leasing. Three of the plans contain both oil shale and tar sands resources, so a total of 12 plans will be amended. This FPEIS evaluates the amendment of BLM land use plans in those areas where oil shale and tar sands resources are present to provide the opportunity for application to lease BLM administered land for commercial oil shale and tar sands development. The planning area lies within the Green River Formation in Colorado, Utah, and Wyoming.

The purpose and need for the PRMP Amendments is to:

(1) Identify the most geologically prospective areas where oil shale and tar sands resources are present on public lands; and

(2) Amend 12 land use plans to allow for application for commercial oil shale or tar sands leasing, exploration and development.

In the Notice of Intent to prepare a PEIS, published in the **Federal Register** on December 13, 2005 (70 FR 73791), the BLM identified planning criteria, initiated the public scoping process, and invited the public to provide comments on the scope and objectives of the PEIS and to identify issues to be addressed in the planning process. During the scoping process, public meetings were held in Salt Lake City, Vernal, and Price, Utah; Rock Springs and Cheyenne, Wyoming; and Rifle and Denver, Colorado. Approximately 5,000 people participated in the scoping process by attending public meetings or submitting comments. The BLM published a scoping report in March 2006, summarizing and categorizing issues, concerns, and comments, and considered them in developing the alternatives in this PEIS.

A Notice of Availability of the RMP Amendments and Draft PEIS was published in the **Federal Register** on December 21, 2007 (72 FR 72751), for a 90-day public review and comment period. The comment period closed on March 20, 2008, reopened on March 21, 2008, for an additional 30-day review and comment period, and closed on April 21, 2008. Open Houses were held during February 2008 to provide additional information on the Draft PEIS. Comments on the Draft PEIS received from the public and cooperating agencies were considered and incorporated, as appropriate, into the proposed plan amendments. As a result of comments received, and upon further consideration, clarifications were made to the analysis and description of the proposed action, but proposed land use plan alternatives remained unchanged. Of the over 105,000 comments received, approximately 5,000 were individual comments and approximately 100,000 appeared to be similar or identical to one another (i.e., form letters).

The study area analyzed in the PEIS for the oil shale resources includes the most geologically prospective resources of the Green River Formation located in the Green River, Piceance, Uinta, and Washakie Basins, encompassing approximately 3,540,000 acres. The BLM has identified the most geologically prospective areas for oil shale development on the basis of the grade and thickness of the oil shale deposits. For the purposes of this PEIS, the most geologically prospective oil shale resources in Colorado and Utah are those deposits that yield 25 gallons of shale oil per ton of rock (gal/ton) or more and are 25 feet thick or greater. In Wyoming, where the oil shale resources are of lesser quality than in Colorado and Utah, the most geologically prospective oil shale resources are those deposits that yield 15 gal/ton or more of shale oil and are 15 feet thick or greater.

For the tar sands resources, the study area analyzed in the PEIS includes those locations designated as Special Tar Sand Areas (STSAs) by Congress in the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78). Eleven STSAs were identified in Utah: Argyle Canyon-Willow Creek (hereafter referred to as Argyle Canyon), Asphalt Ridge-Whiterocks and Vicinity (hereafter referred to as Asphalt Ridge), Circle Cliffs East and West Flanks (hereafter referred to as Circle Cliffs), Hill Creek, Pariette, P.R. Spring, Raven Ridge-Rim Rock and Vicinity (hereafter referred to as Raven Ridge), San Rafael Swell, Sunnyside and Vicinity (hereafter referred to as Sunnyside), Tar Sand Triangle, and White Canyon. The total area of the tar sands study area is approximately 1,026,000 acres.

The oil shale and tar sands resources within the study areas defined in the PEIS are located within the jurisdiction

of 12 separate BLM administrative units. These units include the Glenwood Springs, Grand Junction, and White River Field Offices in Colorado; the Moab, Monticello, Price, Richfield, and Vernal Field Offices, and the Grand Staircase Escalante National Monument in Utah; and the Kemmerer, Rawlins, and Rock Springs Field Offices in Wyoming. With the exception of the Grand Staircase-Escalante National Monument, the ROD for this PEIS would direct which land use plans in affected BLM administrative units will be amended to make designated lands available for application for commercial leasing, exploration, and development of oil shale and tar sands resources.

Within the above-listed administrative units, and within the defined boundaries of the most geologically prospective resources of the Green River formation and the designated STSAs, public lands managed by the BLM where the Federal government owns full fee title are included in the scope of the PEIS analysis. Lands where the surface estate is owned by Tribes, States, or private parties but where the Federal government owns the subsurface mineral estate (i.e., split estate lands) are also included in the scope of this analysis. Tribal lands on which both the surface estate and subsurface mineral estate are owned by the Tribe are not included in the scope of analysis.

In the PEIS, three alternatives were analyzed for amending land use plans to make BLM-administered lands available for application for future commercial leasing of both oil shale and tar sands resources, including a No Action alternative. These alternatives were developed through issue identification during the scoping process. Such issues included air quality, water quality and quantity, socio-economic concerns, ecological concerns, cultural, paleontology, and non-Wilderness Study Area lands with wilderness characteristics. The BLM has identified Alternative B as the proposed plan amendment. Of the 3,540,000 acres in the study areas, the preferred alternative would amend plans to make approximately 2 million acres of lands containing oil shale resources available for application for commercial leasing and approximately 430,000 acres available for tar sands. Alternative A, the no action alternative, would not amend land use plans to identify lands as available for application for lease, but would leave 352,780 acres of lands available for lease application under existing plans. Alternative C, which is similar to the Alternative B, would amend land use plans to identify areas available for application for lease comprising approximately 830,000 acres containing oil shale resources and approximately 230,000 acres available for tar sands.

This PEIS has been developed to analyze the direct, indirect, and cumulative environmental, cultural, and socioeconomic impacts of the three alternatives. The BLM's action of amending land use plans to open lands for application to lease oil shale and tar sands resources will not authorize issuance of any leases or ground disturbing activities. Future lease issuance and approval of development plans will be subject to additional NEPA analysis. As such, the BLM has determined that there are no environmental impacts associated with the amendment of land use plans. However, because BLM intends to establish a commercial leasing program to facilitate future development, BLM has included a broad, programmatic-level analysis of the potential impacts of oil shale and tar sands development technologies as they are currently known, in order to inform the land use planning decision as well as the development of this program.

Because developing this and other alternative energy resources is of strategic importance in enhancing our Nation's domestic energy supplies, the Assistant Secretary, Land and Minerals Management, in the Department of the Interior is the responsible official for these proposed plan amendments. The Federal Land Policy and Management Act and its implementing regulations provide land use planning authority to the Secretary, as delegated to this Assistant Secretary. Because this decision is being made by the Assistant Secretary, Land and Minerals Management, it is the final decision for the Department of the Interior. This decision is not subject to administrative review (protest) under the BLM or Departmental regulations (43 CFR 1610.5–2).

Authority: 40 CFR 1506.6, 43 CFR 1610.2, 43 CFR 1610.5–1.

Michael D. Nedd,

Assistant Director, Minerals and Realty Management.

[FR Doc. E8–20693 Filed 9–4–08; 8:45 am]

BILLING CODE 4210–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–090–1610–017J]

Notice of Availability of Monticello Field Office Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) for the Monticello Field Office.

DATES: The BLM planning regulations (43 CFR 1610.5–2) state that any person who meets the conditions as described in the regulations may protest the BLM's PRMP/FEIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes this notice in the **Federal Register**.

ADDRESSES: Copies of the Monticello Field Office PRMP/FEIS were sent to affected Federal, State, and local government agencies and to interested parties. Copies of the PRMP/FEIS are available for public inspection at:

Monticello Field Office, 365 N. Main, Monticello, UT 84535.

Utah State Office, 440 West 200 South, Salt Lake City, UT 84145.

Interested persons may also review the PRMP/FEIS on the Internet at *http://www.blm.gov/ut/st/en/fo/monticello/planning.html*. All protests must be in writing and mailed to the following addresses:

Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nick Sandberg, Monticello Field Office, 365 N. Main, Monticello, UT 84535; phone: (435) 587–1500; or e-mail at: *Nick_Sandberg@blm.gov.*

SUPPLEMENTARY INFORMATION: The Monticello RMP planning area is located in southeast Utah. The BLM administers approximately 1.8 million acres of surface estate and 2.5 million

acres of Federal mineral estate within the planning area.

The Monticello RMP will provide future broad-scale management direction for land use allocations and allowable uses on public lands within the planning area. Implementation of the decisions of the PRMP would apply only to BLM-administered public lands and Federal mineral estate. In the Monticello Field Office Draft RMP/EIS (DRMP/DEIS), which was released for a 90-day public review and comment period in November 2007, five alternatives were analyzed, including a No Action alternative. These alternatives were developed through issue identification during the scoping process. Such issues included: Recreation use and off-highway vehicles (OHVs), mineral development, special designations (ACECs and WSRs), cultural resource management, and non-WSA lands with Wilderness Characteristics.

The PRMP/FEIS would designate two new Areas of Critical Environmental Concern (ACECs), and the continuation of five existing ACECs, totaling 74,430 acres. Resource use limitations that apply to the proposed ACECs include a range of different prescriptions as described in Table 1 below.

TABLE 1—EVALUATION OF AREAS OF CRITICAL ENVIRONMENTAL CONCERN

ACEC	Values of concern	Resource use limitations	Acres
Alkali Ridge	Cultural	All cultural properties eligible for the NRHP would be surrounded by an avoidance area sufficient to allow permanent protection; where avoidance is not possible and adverse impacts may occur, BLM would develop appropriate mitigation measures; available for mineral leasing under controlled surface use except the National Historic Landmark which would be available under No Surface Occupancy; confine woodland harvest to specific areas if cultural resources are being impacted; OHV use limited to designated routes.	39,196
Hovenweep	Cultural	Visual Protection Zone: Available for mineral leasing with No Surface Occupancy; managed as VRM II.	2,439
		Cajon Pond: Available for mineral leasing and other surface uses with stipulations to prevent surface occupancy or surface disturbance during March 1–June 30 and excluded from livestock use yearlong within the fenced portion.	
		General Area: All cultural properties eligible for the NRHP would be surrounded by an avoidance area sufficient to allow permanent protection; where avoidance is not possible and adverse impacts may occur, BLM would develop appropriate mitigation measures; available for mineral leasing under controlled surface use; OHV use limited to designated roads and trails; unavailable for disposal of mineral materials, and excluded from private or commercial use of woodland products, except for limited on-site collection of dead wood for campfires.	
Indian Creek	Scenic	Available for mineral leasing subject to No Surface Occupancy; unavailable for mineral material disposal; and unavailable for private or commercial use of woodland products including on-site collection of dead wood for campfires; managed as VRM I and closed to OHV use.	3,908
Lavender Mesa	Relict Vegetation	Excluded from land treatments or other improvements, except for test plots and facilities necessary for study of the plant communities, and restoration/reclamation activities; available for mineral leasing subject to No Surface Occupancy; campfires are not allowed; limit recreation use if vegetation communities are being adversely impacted; unavailable for mineral material disposal; unavailable for private or commercial use of woodland products including limited on-site collection of dead wood for campfires; unavailable for livestock grazing, including saddle stock and pack animals allowed for access; excluded from wildlife habitat improvements and watershed control structures; managed as VRM II; closed to OHV use; and excluded from surface disturbance by mechanized or motorized equipment, except helicopter access for scientific study and heliportable equipment insofar as possible.	649
Shay Canyon	Cultural	OHV and mechanized travel limited to designated routes; no surface disturbance for vegetation, watershed, or wildlife treatments/improvements; manage as NSO for oil and gas; open to geophysical exploration as long as it is consistent with the objectives of the ACEC; grazing restricted to trailing only; with the exception of side canyons, hiking limited to designated trails; open to mineral entry with an approved plan of operations to avoid impacts to cultural and paleontological resources; unavailable for disposal of mineral materials; closed to campfires; unavailable for private or commercial use of woodland products including on-site collection of dead wood for campfires; recreation use may be limited if cultural and paleontological resources are impacted; and closed to camping.	119

TABLE 1—EVALUATION OF AREAS OF CRITICAL ENVIRONMENTAL CONCERN—Continued

ACEC	Values of concern	Resource use limitations	Acres
San Juan River	Scenic, Cultural, Wildlife, Natural Systems.	Vehicle access, including OHVs/mechanized, limited to designated routes; unavailable for private/commercial use of woodland products except for limited on-site collection of dead wood for campfires, driftwood collection only would be allowed within floodplains; available for livestock use October 1–May 31 and must incorporate rest-rotation and/or deferred management systems; available for oil and gas leasing subject to No Surface Occupancy; unavailable for mineral material disposal; recommended for withdrawal from locatable mineral entry; limit recreation use if wildlife values are being adversely impacted; closed to camping in areas as necessary to protect cultural, wildlife and natural processes; managed as VRM I (parts) and VRM II (parts) and VRM III (parts); designated access trails to cultural sites as necessary to protect cultural resources; no camping in cultural sites; and ropes and other climbing aids not allowed for access to ruins, cultural sites, and nesting raptors.	5,258
Valley of the Gods	Scenic	Unavailable for mineral leasing; unavailable for mineral material disposal; OHV use limited to designated roads and trails; managed as VRM I and unavailable for private/commercial use of woodland products.	22,863

Comments on the Monticello Field Office DRMP/DEIS received from the public and internal BLM review were considered and incorporated as appropriate into the PRMP/FEIS. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land use plan decisions.

Instructions for filing a protest with the Director of the BLM regarding the PRMP/FEIS may be found in the Dear Reader Letter of the PRMP/FEIS and at 43 CFR 1610.5–2. E-mailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov.* All protests, including the follow-up letter (if e-mailing or faxing) must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 43 CFR 1610.2, 43 CFR 1610.5–1

Selma Sierra,

Utah State Director.

[FR Doc. E8–20670 Filed 9–4–08; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–448 and 731–TA–1117 (Final)]

Certain Off-the-Road Tires From China; Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of certain off-the-road tires, provided for in subheadings 4011.20.10, 4011.20.50, 4011.61.00, 4011.62.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.93.40, 4011.93.80, 4011.94.40, and 4011.94.80 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 and sold in the United States at less than fair value (LTFV).[2] [3]

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Daniel R. Pearson dissenting.

[3] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on China.

Background

The Commission instituted these investigations effective June 18, 2007, following receipt of a petition filed with the Commission and Commerce by Titan Tire Corporation, Des Moines, Iowa, and The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC, Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of certain off-the-road tires from China 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 March 3, 2008 (73 FR 11437). The hearing was held in Washington, DC, on July 8 and 9, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on August 28, 2008. The views of the Commission are contained in USITC Publication 4031 (August 2008), entitled Certain Off-The-Road Tires from China: Investigation Nos. 701–TA–448 and 731–TA–1117 (Final).

Issued: August 29, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–20532 Filed 9–4–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (''APOs'') in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under Title VII and violations of the Commission's rules including the rule on bracketing business proprietary information (''BPI'') (the ''24-hour rule''), 19 CFR 207.3(c). This notice provides a summary of investigations completed during calendar year 2007 of breaches in proceedings under Title VII and section 337 of the Tariff Act of 1930, the only proceedings in which investigations of breaches were completed during the year. The Commission intends that this report inform representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations or other proceedings conducted under Title VII of the Tariff Act of 1930, sections 202 and 204 of the Trade Act of 1974, section 421 of the Trade Act of 1974, section 337 of the Tariff Act of 1930, and North American Free Trade Agreement (NAFTA) Article 1904.13, 19 U.S.C. 1516a(g)(7)(A) may enter into APOs that permit them, under strict conditions, to obtain access to BPI (Title VII) or confidential business information (''CBI'') (section 421, sections 201–204, and section 337) of other parties. *See* 19 U.S.C. 1677f; 19 CFR 207.7; 19 CFR 207.100, et seq.; 19 U.S.C. 2252(i); 19 U.S.C. 2451a(b)(3); 19 CFR 206.17; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34. The discussion below describes APO breach investigations that the Commission has completed during calendar year 2007, including a description of actions taken in response to these breaches.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. *See* 56 FR 4846 (Feb. 6, 1991); 57 FR 12335 (Apr. 9, 1992); 58 FR 21991 (Apr. 26, 1993); 59 FR 16834 (Apr. 8, 1994); 60 FR 24880 (May 10, 1995); 61 FR 21203 (May 9, 1996); 62 FR 13164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000); 66 FR 27685 (May 18, 2001); 67 FR 39425 (June 7, 2002); 68 FR 28256 (May 23, 2003); 69 FR 29972 (May 26, 2004); 70 FR 42382 (July 25, 2005); 71 FR 39355 (July 12, 2006); and 72 FR 50119 (August 30, 2007). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2005 a fourth edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. No. 3755). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205–2000 and on the Commission's Web site at *http://www.usitc.gov.*

I. In General

The current APO form for antidumping and countervailing duty investigations, which was revised in March 2005, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI disclosed under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than—

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with this APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials *e.g.*, documents, computer disks, etc. containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: Storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of this APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) With a cover sheet identifying the document as containing BPI,

(ii) With all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) If the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) If by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of this APO; and

(10) Acknowledge that breach of this APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of an APO may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to 7 years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of, or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

APOs in investigations other than those under Title VII contain similar, though not identical, provisions.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of CBI and BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's Title VII and safeguard rules relating to BPI/CBI is the ''24-hour'' rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI/CBI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this 1-day period. No changes—other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI/CBI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amended document pursuant to section 201.14(b)(2) of the Commission's rules.

II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation has commenced and that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of the General Counsel (OGC) prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the possible breacher's views on whether a breach has occurred.[1] If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that although a breach has occurred, sanctions are not warranted, and therefore finds it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI that the Commission is a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''[T]he effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI. The Commission considers whether there are prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit an economist or consultant to obtain access to BPI/CBI under the APO in a Title VII or safeguard investigation if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C); 19 CFR 206.17(a)(3)(B) and (C). Economists and consultants who obtain access to BPI/CBI under the APO under the direction and control of an attorney nonetheless remain individually

[1] Procedures for inquiries to determine whether a prohibited act such as a breach has occurred and for imposing sanctions for violation of the provisions of a protective order issued during NAFTA panel or committee proceedings are set out in 19 CFR 207.100–207.120. Those investigations are initially conducted by the Commission's Office of Unfair Import Investigations.

responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, and section 135(b) of the Customs and Trade Act of 1990, 19 U.S.C. 1677f(g). *See also* 19 U.S.C. 1333(h).

The two types of breaches most frequently investigated by the Commission involve the APO's prohibition on the dissemination of BPI or CBI to unauthorized persons and the APO's requirement that the materials received under the APO be returned or destroyed and that a certificate be filed indicating which action was taken after the termination of the investigation or any subsequent appeals of the Commission's determination. The dissemination of BPI usually occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included: The failure to bracket properly BPI/CBI in proprietary documents filed with the Commission; the failure to report immediately known violations of an APO; and the failure to adequately supervise non-legal personnel in the handling of BPI/CBI.

In the past several years, the Commission completed APOB investigations that involved members of a law firm or consultants working with a firm who were granted access to APO materials by the firm although they were not APO signatories. In these cases, the firm and the person using the BPI mistakenly believed an APO application had been filed for that person. The Commission determined in all of these cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO. Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all cases in which action was taken, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified his or her APO status before obtaining access to and using the BPI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances where they did not technically breach the APO but where their actions or inactions did not demonstrate diligent care of the APO materials even though they appeared regularly before the Commission and were aware of the importance the Commission placed on the care of APO materials.

The Commission's Secretary has provided clarification to counsel representing parties in investigations relating to global safeguard actions, section 202(b) of the Trade Act of 1974, investigations for relief from market disruption, section 421(b) or (o) of the Trade Act of 1974, and investigations for action in response to trade diversion, section 422(b) of the Trade Act of 1974, and investigations concerning dumping and subsidies under section 516A and title VII of the Tariff Act of 1930 (19 U.S.C. 1303, 1516A and 1671–1677n). The clarification concerns the requirement to return or destroy CBI/BPI that was obtained under a Commission APO.

A letter was sent to all counsel on active service lists in mid-March 2007. Counsel were cautioned to be certain that each authorized applicant files within 60 days of the completion of an investigation or at the conclusion of judicial or binational review of the Commission's determination a certificate that to his or her knowledge and belief all copies of BPI/CBI have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized. This requirement applies to each attorney, consultant, or expert in a firm who has been granted access to BPI/CBI. One firm-wide certificate is insufficient. This same information is also being added to notifications sent to new APO applicants.

In addition, attorneys representing clients in section 337 investigations should send a notice to the Commission if they are no longer participating in a section 337 investigation or the subsequent appeal of the Commission's determination. In Case 10 of the summaries of completed 2005 APOB investigations published in the **Federal Register** on July 12, 2006 (71 *FR* 39361), the Commission found that a lead attorney, who left a law firm which represented a respondent in a Commission investigation after the investigation was completed but before the appeal of the Commission's determination had ended, breached the APO by not informing the Commission of his departure and that he should no longer be a signatory to the APO. In addition, the Commission found that he had also breached the APO by failing to ensure that his former firm complied with the APO requirements for returning and destroying the confidential materials obtained under the APO. Thus, individual counsel in section 337 investigations should take care to inform the Commission of their departure from a position for which they are a signatory to a Commission APO and to inform the Commission about their disposition of CBI obtained under the APO that is in their possession or they could be held responsible for any failure of their former firm to return or destroy the CBI in an appropriate manner.

III. Specific Investigations in Which Breaches Were Found

The Commission presents the following case studies to educate users about the types of APO breaches found by the Commission. The studies provide the factual background, the actions taken by the Commission, and the factors considered by the Commission in determining the appropriate actions. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure of such facts could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

Case 1: The Commission determined that three attorneys and two legal assistants breached an APO by failing to redact unbracketed BPI in the public version of a posthearing brief and serving it on attorneys named on the public service list. The Commission also found that two of the attorneys responsible for this first breach, along with a fourth attorney, committed a second breach by using the BPI obtained under APO on behalf of one client in a submission to a World Trade Organization (WTO) dispute resolution panel on behalf of another client.

The Commission issued a private letter of reprimand to three of the attorneys for the first breach. In reaching its decision concerning those attorneys, the Commission considered the facts that (1) the breach was discovered by the Commission Secretary; (2) a long period of time, approximately eight

months, elapsed between the filing of the brief and the discovery of the breach; (3) the firm could not provide a definitive response as to whether the brief containing BPI was read by non-signatories; and (4) while the lawyers responded quickly with regard to parties other than their clients, they delayed contacting their own clients until two days after notification of the breach. The Commission did note that mitigating circumstances existed because the breach was inadvertent, the attorneys had no prior APO breaches within the two-year period normally considered by the Commission for sanctions purposes, the firm took immediate steps to correct the breach, and the firm strengthened its internal procedures to require that a third attorney review the public version of documents to ensure that all redactions have been implemented. The Commission issued a warning letter to the legal assistants finding that they were acting under the supervision of the attorneys at the time of the breach.

With respect to the second breach, the Commission considered the mitigating circumstance that, although the submissions to the WTO dispute resolution panel contained statements that could not have been made without knowledge of the confidential record, no BPI was disclosed to unauthorized persons. As was stated above, two of the attorneys responsible for this second breach were issued private letters of reprimand which included the Commission's consideration of this second breach. The third attorney who was responsible for only the second breach was issued a warning letter. The Commission decided to issue a warning letter because, although the breach was not discovered by his firm, no BPI was disclosed to unauthorized persons, he had not breached an APO in the past two years, and the breach was unintentional.

Case 2: The Commission determined that several attorneys and one paralegal breached an APO by failing to return or destroy certain materials at the conclusion of a Commission section 337 investigation. The Commission also found that one of the attorneys and the paralegal committed a second breach by permitting the disclosure of CBI subject to an APO to unauthorized persons at their firm.

Upon conclusion of this section 337 investigation, the parties to the investigation agreed that, notwithstanding the APO, they would retain an archival copy of certain documents produced by each other. However, documents not subject to that separate agreement and any CBI produced by third parties were to be returned or destroyed. The attorneys and the paralegal failed to return or destroy all of the materials containing CBI that were not covered by the agreement.

The Commission issued warning letters to ten attorneys for the first breach. These attorneys had no prior APO breaches within the two-year period normally considered by the Commission for sanctions purposes, and the breach was unintentional.

The Commission issued private letters of reprimand to the attorney and paralegal who had committed both the first and second breaches. In reaching its decision, the Commission considered the facts that (1) there were two breaches, (2) the CBI appeared to have been viewed by at least some unauthorized firm personnel before the CBI was discovered and secured, and (3) there was a significant delay in notifying the Commission of the second breach. The Commission did note that mitigating circumstances existed because both of the breaches appeared to have been inadvertent, neither the attorney nor the paralegal had committed breaches prior to the breaches in this instance, and the attorney was cooperative and took steps to protect the CBI and inform the Commission of the second breach.

The Commission also found that four other attorneys and two paralegals did not breach the APO. These individuals were not in a position to arrange for the return or destruction of the CBI at issue.

The Commission also considered whether there was a violation of 19 CFR 210.34(d) by two attorneys for failing to report to the Commission immediately upon learning that CBI disclosed to them pursuant to the protective order was the subject of a discovery request. The Commission decided that there was no violation because the attorneys fulfilled their obligation by reporting to the Commission within four days of the discovery request.

Case 3: The Commission determined that three attorneys breached an APO by their failure to redact certain BPI in the public version of a prehearing brief. In the brief, the attorneys provided import data from multiple countries for the subject merchandise. The text indicated that data from one named importer was not included. On the next page the brief contained a chart with import data that included the previously excluded importer, although that fact was not stated.

The Commission found the lawyers' argument that the information in the chart did not contain BPI was unpersuasive. The amount in the chart was larger than what had been discussed on the previous page where the one importer's data was excluded. In addition, the data in the chart corresponded closely to BPI in the prehearing staff report. Although the lawyers had argued that the information was publicly available, the Commission noted that the submissions regarding this matter identified no public source for the information.

The Commission issued warning letters to the three attorneys for this breach. The Commission noted that mitigating circumstances existed because the breach was inadvertent, the attorneys had no prior APO breaches, they took immediate steps to correct the breach, they promptly reported the breach to the Commission's Secretary, and there was no evidence that any unauthorized individual viewed the BPI.

Case 4: The Commission found that a lead attorney breached an APO by forwarding an e-mail from the Commission with an attachment containing BPI to executives of a client who were not subject to the APO.

The attachment was a copy of the Commission's confidential staff report sent by a Commission staff member. Although the e-mail did not identify the attachment as containing BPI, the name of the attachment ended in ''BPI,'' and, once opened, each of its pages were identified as confidential.

The attorney forwarded the e-mail to three executives at his client's firm without opening the attachment or realizing that it contained BPI. After forwarding the e-mail the attorney opened the attachment and immediately contacted the recipients and instructed them to delete the attachment without reading it. The attorney then informed the Commission of the breach.

In his affidavit the attorney indicated that all recipients deleted the attachment without opening it. The attorney also stated that in his experience Commission staff did not distribute BPI material by e-mail.

The Commission has consistently held that an APO breach occurs when a document containing BPI is distributed to unauthorized persons even if they do not view the BPI. Accordingly the Commission found that a breach occurred in this case. Further, the Commission found that a cursory inspection of the attachment would have indicated that it contained BPI, which suggests the attorney bore some responsibility for the breach.

The Commission issued a warning letter rather than a private letter of reprimand because the breach was unintentional, the attorney had not committed a breach within the most

recent two-year period normally considered by the Commission for sanctions purposes, the attorney acted promptly to mitigate the breach by instructing the recipients of the e-mail to delete the attachment, and it appeared that BPI was not viewed by any unauthorized persons.

Case 5: The Commission found that an attorney breached the APO by sending an e-mail with an attachment containing BPI to two employees of his client who were non-signatories to the APO.

The Commission issued a warning letter to the attorney because there were several mitigating circumstances and no aggravating circumstances. The breach was unintentional and the attorney discovered the breach promptly. The attorney immediately notified the client's employees not to read the attachment and to delete the e-mail with its attachment. Thus, it appeared that neither of the client's employees viewed the attachment. In addition, this was the attorney's only breach in which he had been involved in the previous two years.

Case 6: The Commission found that an associate attorney breached an APO when he failed to redact BPI from the public version of a post-hearing brief. The Commission found that the lead attorney did not breach the APO because he did not participate in finalizing the brief and he reasonably relied on the associate attorney.

The Commission notified the associate attorney that the public version of his firm's brief contained BPI. The BPI was contained in an exhibit that escaped the firm's review procedure because of a last-minute change. Upon being notified of the breach, the associate attorney asked each party on a public service list to confirm that the BPI was either not received by any unauthorized party or was recalled from any unauthorized party and destroyed. According to his affidavit, the associate attorney believed that no unauthorized party received the BPI.

Because BPI was made available to unauthorized parties, the Commission found that the associate attorney breached the APO. The Commission issued a warning letter rather than a private letter of reprimand to the associate attorney even though the Commission rather than the associate attorney's firm discovered the breach. The mitigating circumstances the Commission considered were that the breach was unintentional, the associate attorney acted immediately to cure the breach, no person involved in the investigation had committed previous violations of an APO, and the firm's submissions supported a finding that no unauthorized parties viewed the BPI.

Case 7: A law firm was involved in two breaches of an APO. Both breaches involved service on other law firms that were no longer on the confidential service lists. The Commission found that the first breach was the responsibility of a paralegal. She had been charged with preparing the confidential version of a document containing expert testimony for filing and service. Although it was office procedure to check the certificate of service against the Commission's Web site, she failed to do so. As a result of this error and her use of an outdated service list, a law firm that was not entitled to receive BPI was served with the confidential version of the expert testimony. This first breach was not discovered until after discovery of the second breach.

The second breach occurred two weeks later when two attorneys, a partner who was the lead attorney and an associate, finalized the firm's posthearing brief for filing and service. They had been provided with the same outdated service list by the paralegal, who then left the office on a medical emergency; the two attorneys failed to check whether the certificate of service was current. As a result of the attorneys' use of the outdated service list, two firms that were not entitled to receive BPI were served with the confidential version of the posthearing brief.

The lead attorney discovered the second breach on the first business day after the filing of the posthearing brief and immediately contacted the non-signatory recipients of the posthearing brief. Both firms indicated that the packages had not been opened and returned them with the seals on the internal envelopes intact. The first breach was then discovered when one of the firms receiving the posthearing brief also returned the confidential expert testimony and informed the associate attorney that the document had been stored for safekeeping and never examined.

The Commission found the paralegal responsible for the first breach because she failed to check the certificate of service against the latest APO service list. She was issued a warning letter and was not sanctioned because she had not breached an APO within the previous two years, the breach was unintentional, no non-signatory read the BPI, prompt action was taken by the firm to remedy the breach, and the firm had taken measures to assure that this type of error would not occur in the future.

The Commission found the partner and the associate responsible for the second breach. The partner received a warning letter, and the associate a private letter of reprimand. The Commission considered the mitigating circumstances that the breach was unintentional, the unauthorized recipients did not read the BPI, the breach was discovered promptly and immediate action was taken to remedy the breach, and, solely with regard to the partner, he had not breached an APO within the previous two years. The associate received a private letter of reprimand because he had been found liable for a breach of another APO within the previous two years.

Case 8: The Commission found a lead attorney, an associate attorney, and a paralegal liable for the breach of an APO for failing to delete all of the bracketed information from the public version of a brief filed by their law firm.

The associate attorney instructed the paralegal to prepare an initial public version of the brief by running a computer macro on the electronic document and manually redacting non-electronic portions. The associate attorney reviewed the brief and tabbed a number of bracketing revisions. A second attorney, not found liable for the breach, reviewed the tabbed revisions and suggested more changes. The associate attorney then told the paralegal to make the changes. However, the associate attorney later found a new issue regarding conformity of the BPI and public versions that required a new public version. Citing time constraints and a busy filing day, the associate attorney chose to perform the final check of the brief himself instead of following firm procedure of asking a third attorney to review the public version. The revised BPI and public versions were then filed with the Commission. Later the same day, the second attorney called the associate attorney at home to say that the paralegal, while preparing service copies of the brief, had found text in the public version that was bracketed but not deleted. The associate attorney contacted the paralegal and told her not to serve the public versions of the brief that night because it was late and he needed to review the correction. The next morning, the associate attorney telephoned the Secretary's Office to report the issue, and the paralegal arrived with replacement pages for the Commission copies. As the Commission copies had not been distributed, the paralegal was able to replace the pages and shred the incorrect pages. The paralegal then distributed the service copies to the parties.

The Commission found the paralegal responsible for the breach because the

paralegal had the responsibility to run the computer macro on the brief to redact the bracketed information. However, the Commission determined that there were several mitigating factors because she discovered the breach herself, immediately reported the information to others in the firm, moved promptly to mitigate the effects of the breach, and had not been found to have violated the APO in the last two years; in addition, no unauthorized persons viewed the unredacted BPI. Consequently, the Commission decided to issue a warning letter to the paralegal.

The Commission found the lead attorney responsible for the breach because he had failed to provide adequate supervision over the associate attorney in this matter although he had reason to know that the associate attorney had previously breached the APO in a separate and unrelated proceeding. The Commission decided to issue a warning letter to the lead attorney because the breach was unintentional, no unauthorized persons actually saw the unredacted BPI, the breach was discovered promptly and remedied expeditiously, and this was the only breach in which the lead attorney had been involved in the past two years.

The Commission found the associate attorney responsible because he had final responsibility for reviewing the document and authorized the filing of the document. The Commission considered the mitigating factor that the attorney acted quickly to remedy the situation. Technically the attorney's decision to delay serving the public version on the parties violated the Commission's twenty-four hour rule, but the Commission determined that the violation of the rule did not lead to any prejudicial effect because hand delivering the brief the next day ensured the parties received the brief at the same time they would have received it via overnight mail. Because of the lack of prejudicial effect, the attorney's method of mitigating the breach was not determined to be an aggravating factor.

The associate's prior breach, however, was found to be an aggravating circumstance. Although the breach occurred more than two years previously, the Commission issued a sanction for the prior breach within the two year period. An additional aggravating factor was that the internal firm procedure that the associate attorney overrode, by not having a third attorney review the brief, was the procedure established in response to the attorney's first breach.

Because the attorney had already received a private letter of reprimand for the first breach, the Commission in this case issued a private letter of reprimand containing an additional condition. The associate attorney was prohibited from being the final decision-maker at his law firm on any APO issues for a period of twelve months. For example, he cannot be the final decision-maker at his firm as to whether certain information is BPI, and he cannot be the final person to review the public version of a document before it is filed with the Commission or served on the relevant parties.

Case 9: A law firm filed a public version of its final comments that contained unbracketed BPI. The Commission found that the two associate attorneys who were responsible for preparing the public version of the comments breached the APO.

Shortly after the law firm submitted the public version to the Commission, counsel for one of the companies involved in the investigation contacted the law firm to request the bracketing of additional information in the law firm's final comments. One of the attorneys of the filing firm promptly notified the Commission Secretary's office, stopped service of the first public version of the final comments on the parties, and ensured that the Secretary did not place the first public version on the record. When the law firm submitted a revised public version of its final comments, counsel for the same company again contacted the law firm to request the bracketing of more information. That same day, the law firm prepared a second revised public version of the final comments, filed that version with the Commission, and served it on the parties. The law firm also contacted the parties who received the first revised version. One of the parties confirmed that the first revised version was destroyed unopened, while the other parties confirmed only destruction.

The law firm argued that the information in question was not BPI because the type of information in question was general and normally not treated as BPI. However, the Commission found that the information was BPI and that it had been consistently bracketed by the Commission and other parties to protect the confidential information contained in the staff report and other briefs. The associate attorneys requested that the Commission reconsider its finding that a breach occurred on the basis that the information at issue was not BPI. The Commission denied their request because they did not provide any new arguments or evidence in support of a change in the finding about whether the information was BPI.

The Commission determined that the lead attorney for the law firm was not responsible for the breach because his reliance on the associates for preparing the public version of his firm's final comments was reasonable. The two associates had substantial experience preparing public versions of briefs and, at the time of his delegation to them, had no record of violating another APO within the previous two years.

One of the associate attorneys received a warning letter for his breach. The Commission considered the mitigating circumstances that the breach was inadvertent and that the attorneys took immediate steps to notify the Commission, retrieve the offending documents, and prepare corrected copies of the final comments. The attorney receiving the warning letter had committed no APO breaches in the previous two years. Although there was an aggravating circumstance—the likelihood that unauthorized persons had viewed the BPI—the Commission chose not to sanction the attorney in light of the mitigating circumstance that the nature of the BPI and the attorney's contact with the submitter of the information may have left him uncertain as to the status of the information. The Commission did advise the attorney, however, that, in the future, he should consult with Commission staff if he is uncertain about whether particular information is BPI.

The second associate attorney received a private letter of reprimand for his breach. The Commission considered all of the same mitigating circumstances for this attorney except with respect to prior breaches. After the Commission determined that the attorney had breached the APO in this investigation, he was found to have breached the APO in another investigation that occurred prior to the breach in this investigation. Therefore, the Commission found an additional aggravating circumstance that warranted a private letter of reprimand.

Case 10: The Commission found that a lead attorney and her legal secretary breached the APO by serving the confidential version of the final comments prepared by their firm on a law firm that had been removed from the APO service list.

The attorney's legal secretary used an outdated version of the APO service list to serve the final comments. The law firm's APO procedures required the legal secretary to consult the updated APO service list maintained on the ITC Web site, but the legal secretary neglected to follow this procedure. Although the attorney reviewed the submission, she did not notice the mistake because the service list was the

same as previous service lists. The attorney noticed the mistake when she reviewed the service lists of the other parties. She immediately telephoned the firm that mistakenly received the final comments to ask that they return or destroy the brief, then followed up to confirm that the firm had destroyed the brief before any unauthorized person reviewed it.

The Commission determined that both the lead attorney and her legal secretary violated the terms of the APO because disclosure of BPI to unauthorized persons, regardless of whether those persons viewed the BPI, constitutes an APO breach. However, the Commission determined not to initiate the second phase of the APO breach investigation because of a variety of mitigating circumstances that made issuing a warning letter the most appropriate response to the breach. These mitigating circumstances included the attorney's prompt remedial action, her curing of the breach before unauthorized persons viewed the BPI, and her prompt report of the incident to the Commission. Furthermore, the attorney's breach was unintentional and was her first breach within the past two years. Finally, the firm adopted a new procedure where the lead attorney personally checks the service list against the most current service list on the Commission's Web site to ensure that a similar breach does not occur in the future.

There were three investigations in which no breach was found:

Case 1: The Commission determined that two attorneys and an economic consultant did not breach the APO when, in their final comments, they failed to bracket certain information that had been identified by the Office of the Secretary as BPI. The Commission also found that the same individuals did not breach the APO when they failed to redact certain information contained in brackets in the public version of the final comments filed with the Commission.

The Commission found that the two sets of information in question were publicly available and the failure to bracket and to redact did not constitute breaches. The information that was contained in brackets but was not redacted in the public version of the final comments was information that was derived from a subscription service report that was maintained as confidential in the Commission's staff report. In this case, however, prior to the issuance of the staff report, the law firm in question and another party had filed the same subscription service report with the Commission. Thus, the information was publicly available and independently available to the law firm in question, and the information that was not bracketed in the confidential version of the final comments was made publicly available in the Commission's final staff report.

Case 2: The Commission determined that three attorneys did not breach the APO because unbracketed information in a prehearing brief, identified by Commission staff as confidential, was not BPI.

The information in the prehearing brief that initially appeared to be BPI were two unbracketed unit values. The unbracketed information provided percentage changes in average unit values as opposed to actual unit values, which were not disclosed. The Commission determined that disclosure of the unbracketed numbers did not reveal the BPI of any specific company. The bracketed average unit values were calculated using the BPI for more than three companies, and the identity of specific respondents was not disclosed publicly. Furthermore, it was unclear precisely what data were used to calculate the unit values. Therefore, it was impossible to back out the actual numbers or information of any individual company.

Case 3: The Commission determined that attorneys did not breach the APO by inadvertently serving a confidential version of a motion on counsel for a law firm not included in the APO.

Although the motion was designated ''Confidential,'' the motion did not contain CBI. The purportedly confidential material in the motion consisted of a series of quotes from the confidential version of the Commission opinion. At the time of the motion's filing, no public version of the opinion was available, which led attorneys at the firm in question to designate the motion as ''Confidential'' out of an abundance of caution. However, a review of the confidential and public versions of the Commission opinion revealed that although the confidential version of the opinion did contain CBI, the material quoted in the motion did not include confidential information. The law firm in question also took prompt remedial measures to request the destruction of all copies of the motion and modified their policies for service in the investigation to ensure APO compliance.

As no CBI was disclosed, the Commission found no breach of the APO, but did caution the attorneys involved to be more careful in handling material designated as confidential.

By order of the Commission.

Issued: August 29, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–20540 Filed 9–4–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Notice is hereby given that on August 21, 2008, a Complaint was filed and a proposed Consent Decree was lodged with the United States District Court for the District of New Jersey in *United States of America* v. *Air Products and Chemicals, Inc.*, Civil Action No. 2:08-cv-04216.

In this action the United States seeks reimbursement of response costs incurred by EPA for response actions at the Chemsol, Inc. Superfund Site (''Site'') in Piscataway Township, Middlesex County, New Jersey, and performance of studies and response work at the Site consistent with the National Contingency Plan, 40 CFR Part 300, pursuant to Sections 106 and 107 of the Comprehensive Environmental, Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607 (''CERCLA''). The Consent Decree provides that the new settlors will financially contribute to and perform work at the Site together with a group of potentially responsible parties that resolved their liability to the United States in 2000 in a Consent Decree. The value of this settlement is estimated at approximately $3.1 million, of which $380.170.83 will be paid to EPA for unreimbursed response costs, and $95,747.14 will be paid to the State of New Jersey for the State's Natural Resource Damages caused by the release of hazardous substances at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Air Products and Chemicals, et al.*, D.J. Ref. 90–11–3–06104/3.

The Consent Decree may be examined at the Office of the United States Attorney, Federal Building, 7th Floor, 970 Broad Street, Newark, New Jersey,

and at U.S. EPA Region 2, 290 Broadway, New York, NY 100078. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $ 66.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–20536 Filed 9–4–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Mobile Alliance

Notice is hereby given that, on July 25, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Open Mobile Alliance (''OMA'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Beijing InfoThunder Technology Ltd., XiCheng District, Beijing, PEOPLE'S REPUBLIC OF CHINA; InfoComm Development Authority of Singapore, SINGAPORE; Nil Holdings, Inc., Reston, VA; Semiconductores Investigacion Y Diseno S.A., Madrid, SPAIN; Simartis Telecom SRL, Bucharest, ROMANIA; Ubipart Ltd., Helsinki, FINLAND; and WINIT Inc., Daejeon, REPUBLIC OF KOREA, have been added as parties to this venture. Also, Reigncom Ltd., Gangnamngu, Seoul, REPUBLIC OF KOREA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OMA intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, OMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on April 25, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 27, 2008 (73 FR 36569).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–20566 Filed 9–4–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Prisoner Re-entry Initiative Grants

Announcement Type: Notice for Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY–08–03.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.261.

Key Dates: The closing date for receipt of applications under this announcement is (OGCM will insert; approximately 60 days). Applications must be received no later than 4 p.m. (Eastern Time). Application and Submission information is explained in detail in Section IV of this SGA.

SUMMARY: The President's Prisoner Re-entry Initiative (PRI) seeks to strengthen urban communities characterized by large numbers of returning prisoners through an employment-centered program that incorporates mentoring, job training, and other comprehensive transitional services. This program is a joint effort of the Department of Justice (DOJ) and the Department of Labor (DOL) designed to reduce recidivism by helping inmates find work when they return to their communities, as part of an effort to build a life in the community for everyone. This spring, DOJ awarded PRI grants to 19 State correctional agencies to provide pre-release services to prisoners returning to one targeted county within the State. Under this solicitation, DOL will be awarding grants to faith-based and community organizations (FBCOs) to provide post-release services primarily to the prisoners provided pre-release services under the DOJ grant in urban communities within the target counties. This competition is limited to FBCOs operating within the target county(ies) identified in each DOJ grant. The following is the list of target counties that received a DOJ PRI grant this spring:

1. Jefferson County, AL
2. Maricopa County, AZ
3. Los Angeles County, CA
4. Denver County, CO
5. Fairfield County, CT
6. New Castle County, DE
7. Cook County, IL
8. Allen County, IN
9. Caddo and Bossier Parishes, LA *
10. Baltimore County, MD
11. Genessee County, MI
12. Greene County, MO
13. Clarke County, NV
14. Mercer County, NJ
15. Erie County, NY
16. Tulsa County, OK
17. Philadelphia County, PA
18. Davidson County, TN
19. Milwaukee, WI

DOL expects that each of the 19 awardees will serve at least 100 returning prisoners during the first year of this initiative. FBCOs applying for these grants will identify as part of their application the need in the community that they plan to serve; their plan for serving released prisoners; and their partnerships with the criminal justice system, local Workforce Investment Board, housing authority, and mental health and substance abuse treatment providers.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Jeannette Flowers, Reference SGA/DFA PY 08–03, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Information about applying online can be found in Section IV (C) of this document. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

SUPPLEMENTARY INFORMATION:

* In this instance, the urban area stretches further than one county so applicants operating in one or both counties are permissible.

I. Funding Opportunity Description

A. Background

Each year approximately 650,000 inmates are released from State and Federal prisons and return to their communities and families. Without help, a majority of ex-prisoners do in fact return to criminal activity. According to the U.S. Department of Justice, almost three out of five returning inmates will be charged with new crimes within 3 years of their release from prison and two out of five will be re-incarcerated.

Released prisoners face a myriad of challenges that contribute to a return to criminal activity, re-arrest, and re-incarceration. Joblessness among ex-prisoners has been broadly linked to recidivism rates. Statistics demonstrate that even before incarceration, adult prisoners demonstrate weak or non-existent ties to the workforce. Data from 1997 show that nearly one-third of adult prisoners were unemployed in the month before their arrest, compared to seven percent unemployment in the general population.[1] Post-incarceration, employment rates only get worse—unemployment among ex-prisoners has been estimated at between 25 and 40 percent. Likewise, prisoners also demonstrate low levels of educational attainment. Nineteen percent of adult State prisoners are completely illiterate and 40 percent are functionally illiterate;[2] over half of State parole entrants were not high school graduates and as many as eleven percent had only an eighth grade education or less.[3] Additionally, the high economic cost of incarceration and the loss of large numbers of potential workers in some cities and regions across the U.S. threatens our nation's global competitiveness and in some cities and regions across America, it represents a real disincentive for business investment.

Research has also broadly documented the substance abuse and mental health issues of ex-prisoners—factors that are likely to contribute to poor education levels, un-employability, and a return to criminal activity. A study of parolees from State prisons in 1999 found that 84 percent had been using an illegal drug or abusing alcohol at the time of their offense. One-quarter had been alcohol dependent and one-quarter had been IV drug users. Fourteen percent had a mental illness and twelve percent were homeless at the time of their arrest. In some States, nearly one-quarter of parole revocations were related to drug-related violations.[4] Estimates of mental illness among the prison population vary. One study found that sixteen percent of State prison and local jail inmates had a mental illness as did seven percent of Federal prisoners. Among detainees with a mental disorder, 72 percent also had a substance abuse disorder.[5] In a survey of prisoners, one-fourth of male adults and more than one-third of female adults reported having been treated at some time for a mental or emotional problem.[6] Only one-third of adult male detainees and one-fourth of females who needed services for severe mental disorders received treatment in jail.[7]

In returning to criminal activity, ex-prisoners contribute to the presence of violence and crime in already struggling neighborhoods and reduce their chances of living healthy and positive lives and strengthening their families. Research indicates that parental loss is related to a host of poor outcomes for children that include poverty, drug abuse, educational failure, criminal behavior, and premature death. Healthy and consistent relationships between parents and children strengthen the community by positively impacting both parent and child generations. Ex-offenders who maintain strong family and community ties have greater success in reintegrating into the community and avoiding incarceration.[8]

In order to successfully reintegrate into the community it is essential that ex-offenders possess the skills and support necessary to enter and compete in the workforce. The Prisoner Re-entry Initiative is designed to draw on the unique strengths of faith-based and community-based organizations and to rely on them as a primary partner for social service delivery to ex-prisoners by providing a direct link into the communities to which the ex-prisoners are returning. It also seeks to coordinate the provision of these services with supervision of these released prisoners to ensure they are held accountable for their behavior upon release.

Community-based partners are well suited for this work because they can provide the resources and infrastructure that are necessary to intervene in the lives of returnees and interrupt cycles of crime and incarceration. This grant will rely heavily on FBCOs to develop relationships and ensure connections to rehabilitation services for the formerly incarcerated.

In addition, FBCOs will be utilized in this grant because evidence indicates that faith-based and community institutions are among the strongest, most trusted institutions in the urban neighborhoods to which the majority of released inmates will return. Local faith-based and community institutions are a significant presence, with many resources at their command—including buildings, volunteers, and a tradition of outreach and service.[9] Churches, mosques, temples, and community centers are especially significant in poor urban areas where FBCOs have historically had a strong presence. The additional trust that many FBCOs have earned outside urban centers is invaluable, since collaboration and communication with public, private and nonprofit providers and policymakers are essential to helping those in resource-poor neighborhoods.

Many FBCOs also possess a proven ability to work collaboratively with other service providers and justice agencies for the delivery of social services. This is an invaluable asset as the FBCOs that operate in poor urban neighborhoods are typically small and have limited financial resources. For them to effectively ensure connections to job training and social services, it is critical that they build collaborations with other public and private organizations.

A substantial number of inner-city faith-based and community organizations already have re-entry programs, including 30 Generation 1 PRI Grantees awarded in 2005 and 23 Generation 2 PRI Grantees just awarded this spring. This set of Generation 3 PRI Grantees will serve to further expand the number of such reentry programs in the country.

B. Objectives

The Prisoner Re-entry Initiative is designed to strengthen urban communities through an employment-centered program that incorporates mentoring, job training, and other

[1] Petersilia, 2002. *When Prisoners Come Home: Parole and Prisoner Reentry.*

[2] Rubinstien, 2001 as quoted in Petersilia, 2002.

[3] Petersilia, 2002.

[4] Hughes, T.A., Wilson, D.J., and Belk, A.J., 2001, *Trends in State Parole, 1990–2000.* Bureau of Justice Statistics, Special Report, NCJ 184735.

[5] Ditton, P.M., 1999, *Mental Health and Treatment of Inmates and Probationers,* Washington, DC: U.S. Department of Justice.

[6] Harlow, C.W., 1998, *Profile of Jail Inmates, 1996,* Bureau of Justice Statistics Special Report, Washington, DC: U.S. Department of Justice, NCJ164620.

[7] Substance Abuse and Mental Health Services Administration, 2002, *Report to Congress on the Prevention and Treatment of Co-occurring Substance Abuse Disorders and Mental Disorders.*

[8] Hairston, 1991; Muston, 1994; Nelson, 1999.

[9] Branch, 2002. Faith and Action: Implementation of the National Faith-Based Initiative for High-Risk Youth, Public/Private Ventures.

comprehensive transitional services. This program seeks to reduce recidivism by helping inmates find work when they return to their communities, keep those jobs and increase their earnings over time. In the local areas served through this initiative, FBCOs will provide comprehensive and coordinated services to ex-offenders in the following four areas:

• *Employment:* Employment is a critical stabilizing factor for ex-offenders and this initiative will stress job placement, job retention, and increasing the earnings potential of released prisoners. FBCOs will offer job training and job placement services in coordination with business, local One-Stop Centers, educational institutions, and other employment providers. Partnering faith-based and community organizations will provide each program participant with work-readiness, soft skills training, mentoring, job placement or referral for job placement, and follow-up services to increase job retention.

• *Vocational Training and Educational Services:* Educational attainment is increasingly critical in the global economy. A vast majority of jobs now require more than a high school diploma. FBCOs should conduct assessments and work with participants to create individual development plans to connect participants to continuing education services (either toward the attainment of a high school diploma or GED or toward the attainment of an Associate's or Bachelor's degree), based on the participant's needs and interests, by partnering with adult education agencies, community colleges and other education providers. As well, FBCOs should partner to offer opportunities for advanced vocational training with the goal of industry-recognized certifications, particularly in high-growth, high-demand fields in the local economy.

• *Mentoring:* Mentoring is a key element of re-entry support. Previous research and programming have demonstrated the benefits of mentoring in reducing recidivism and supporting returning offenders. FBCOs will provide post-release mentoring and other services essential to reintegrating ex-offenders in coordination with the corrections, parole, and probation structure. Participating adult ex-offenders will be matched with appropriate mentors who will be primarily responsible for supporting the returnee in the community and the workplace. Mentors will offer support, guidance, and assistance with the many challenges faced by ex-offenders. For the purposes of the Prisoner Re-entry Initiative, mentoring is defined as a relationship over a prolonged period of time between two or more people where caring volunteer mentors assist ex-prisoners in successfully and permanently reentering their communities by providing consistent support as needed, guidance, and encouragement that impacts PRI participants in developing positive social relationships and achieving program outcomes such as job retention, family reunification, reduced recidivism, etc.

• *Referral to Necessary Supportive Services:* While funds provided under this grant must not be used to provide housing, health care, or alcohol or substance abuse treatment, DOL expects that grantees will develop partnerships with the necessary social services agencies within their communities so as to be able to refer released prisoners to these necessary services. In particular, grantees should be connecting with the Department of Veterans Affairs (DVA) through the local workforce system's Local Veterans' Employment Representative (LVER) and Disabled Veterans' Outreach Program (DVOP) to serve participants who are veterans. These partnerships should enable service providers to increase the number of successful outcomes at minimal expense since eligible veterans receive a plethora of services including housing, medical, and substance abuse treatment through a Nationwide network of services. Further, the DVA has programs for incarcerated veterans through their Regional offices that may prove invaluable during the marketing of said program since veterans are a known commodity.

C. Design and Structure of the Initiative

What Is the Overall Structure of This Initiative?

This spring, DOJ awarded PRI grants to 19 State criminal justice and other State agencies to provide pre-release services to prisoners returning to one targeted county within the State. Under this solicitation, DOL will be awarding grants to faith-based and community organizations (FBCOs) to provide post-release services to the prisoners provided pre-release services under the DOJ grant in urban communities within the county(ies) targeted by DOJ. DOL will make one award in each of the targeted counties named in the DOJ awards. This competition is limited to FBCOs operating within the target county(ies) identified in each DOJ grant. The list of these target counties can be found in the ''Summary'' at the beginning of this solicitation. DOL expects to serve 2,000 released prisoners during each year of this initiative. As well, the DOJ grants include a requirement of a 30 percent sub-award to a local FBCO in the targeted county. This sub-award may or may not go to the FBCO awarded under DOL's solicitation.

To apply for these grants, FBCOs must identify an urban community within the targeted county(ies) and describe the need for this Federal support in that community and their plan for providing services to released prisoners. They must also demonstrate that they have established partnerships with the criminal justice system, local Workforce Investment Board, and the local housing authority. They must also identify their plan to leverage other Federal, State, or local resources, as well as private sector resources, to provide other support services that are not directly funded through this initiative such as substance abuse and mental health treatment.

Given that DOL plans to award grants to 19 FBCOs in the counties that are the focus of the recently awarded DOJ grants, FBCOs in one county will not be competing against FBCOs in another county. Rather, DOL expects that more than one FBCO will be applying for a grant in each of the target county areas within the 19 DOJ-awarded States, so that FBCOs will be competing against other FBCOs in their same county(ies). If only one organization applies within a county, a review panel will assess that application and a technical acceptability determination will be made. If determined to be technically unacceptable, DOL reserves the right to not make an award within that county.

Who Will Be the Grant Recipients Under This Initiative?

The recipients of the DOL grants will be faith-based and community organizations that are located in or have a pre-existing staff presence in an urban community within the target county(ies) being served.

How Large a Grant Should I Apply for?

FBCOs should apply for a grant of $300,000 to cover their first year of operations. Funds will be awarded under this initiative through grants for an initial period of 1 year, with up to two additional years of funding depending on the availability of funds and demonstrated performance. If funding is available beyond the first 3 years, additional years of performance may be awarded through a competitive reevaluation based on satisfactory performance and/or other factors. The level of funding for additional years of operation may be greater or less than the

initial award amount depending on the availability of funds.

What Is the Target Group To Be Served Under These Grants?

Generally, grantees should plan to serve individuals 18 years old and older who have been convicted as an adult and imprisoned pursuant to an Act of Congress or a State law, and who have never been convicted of a sex-related offense other than prostitution who have been referred to the FBCO from the DOJ State criminal justice agency grantee. Additional information on eligible participants is provided in Section III(A). It is expected that participants referred from DOJ grantees' pre-release programs will have been assessed for risk based on a validated tool and that participants recruited directly from the local community, beyond those they accept from the DOJ grantee referrals, would only be eligible if they did not have a violent presenting or past offense or any sex-related offenses.

What Are Allowable Uses of Grant Funds?

DOL grant funds can be used to provide a variety of services to returning prisoners, including workforce development services, education and vocational training, job training, on-the-job training, work experience, basic skills remediation, counseling and case management, mentoring, and other reentry services. DOL grant funds may also be used for up to 3 months of pre-release services, including orientation, developing post-release plans, building relationships between project staff and prisoners, assisting prisoners to obtain documents necessary for employment upon release, and other activities necessary to establishing program connections with prisoners prior to their release. These funds can also be used to provide incentives to participants for participating in the program and up to 1.5 percent of DOL grant funds may be used to provide needs-based payments to participants, though FBCOs must have a standard and consistent policy in place as to how incentives and needs-based payments are provided to participants.

Will There Be a Planning Period After Grant Award?

FBCOs will be allowed up to 4 months of their first year of operations to put into place their various local partnerships and to hire additional staff, if necessary. The probability of continuation of grants beyond the first year will be greatly reduced for those grantees that do not begin providing services by the end of the first 4 months.

How Will Success Be Measured Under These Grants?

Grantees will be held to nationally established performance goals. Four outcome measures will be used to measure success in these grants: entered employment rate, employment retention rate, average earnings, and recidivism rate. In addition, grantees will report on a number of leading indicators that will serve as predictors of success. Leading indicators will include: enrollment rate; percentage of enrollees participating in mentoring; participation in education, training, and workforce preparation; attainment of degrees and certificates; reduced substance abuse; proportion of enrollees in stable housing; and proportion of enrollees complying with parole conditions. In applying for these grants, FBCOs agree to use DOL's Web-based Management Information System (MIS) and to submit Quarterly Performance Reports (QPRs) that contain data on enrollee characteristics, services provided, placements, outcomes, and follow-up status.

Will There Be an Evaluation of This Initiative?

ETA will require that the program or project participate in an evaluation of overall performance of Prisoner Re-Entry Initiative grants. To measure the impact of the Prisoner Re-Entry Initiative programs, ETA will arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Applicants must agree to fully participate in the evaluation by making records on participants, employers and funding available, and to provide access to program operating personnel and participants, as specified by the evaluator(s) under the direction of ETA, including after the expiration date of the grant.

D. Guidelines for Technical Proposal

How Should I Organize My Technical Proposal?

Organize your technical proposal to answer the questions below. The criteria below will be used to evaluate your proposal. Points will be deducted from applications that are not fully responsive to these questions. The technical questions are as follows:

1. What is the need for the project in the urban community with the target county(ies) to be served by the grant? (10 points)

Identify the urban community within the county(ies) that you propose to serve through your grant and describe its need for this Federal support. Demonstrate how your community can benefit from Federal assistance due to being an urban area heavily impacted by high numbers of returning prisoners and high rates of recidivism. Use census tract data from the 2000 census to show the population of the community, its poverty rate, and its unemployment rate. Use local law enforcement data to show the crime rate and recidivism rate for the community and how this compares with the State or county as a whole. Use data at the neighborhood level rather than the county level in addressing the need for your project.

Applicants will be evaluated based on their ability to demonstrate the need for Federal assistance. This will be assessed by the following elements:

- Number of returning offenders to the urban community identified;
- Rate of recidivism, relative to the target county and the state overall; and
- Unemployment and poverty levels of the community.

2. What Is the Project Design and Service Strategy? (55 points total)

Describe the project design and service strategy for each of the following required program components.

How Do You Plan To Increase the Employment and Education Opportunities of Released Prisoners Who You Will Be Serving? (25 points)

Describe how you will use funds available under this grant to increase the employment opportunities of released prisoners. Describe how you will use assessments to identify the potential for increasing educational attainment of participants, either through the attainment of a GED or through post-secondary education or vocational training. Discuss how you will provide work-readiness training, job placement, and post-placement support. Often a condition of release is to find employment quickly. How will you help these persons find a job soon after their release from prison? Describe how you will work with employers to identify and create job openings for released prisoners. Where applicable, applicants should include letters of commitment from employers detailing how they will train and/or hire participants of the initiative. How will you connect participants with jobs in high-growth, high-demand industries, particularly those most likely to hire ex-offenders. How will you link with WIRED and other DOL-funded workforce development projects in your area? Be sure to indicate how many direct-service staff will be hired with these grant funds to assist released prisoners find employment and justify the need.

How Will You Coordinate With Other Agencies To Obtain Housing Services to Released Prisoners? (10 points)

Funds awarded under this initiative must not be used to provide housing services for participants, but grantees are expected to coordinate with agencies that provide such services. Discuss partnerships in place to provide both transitional housing and permanent housing to released prisoners. Applicants should include letters of commitment detailing the partnerships in place, expected roles of partners and how these partners will coordinate efforts to assist this initiative. Discuss options for assisting released prisoners who need to put a deposit on an apartment. Please note that McKinney Vento Supportive Housing Program (SHP) transitional and permanent housing funded through the Continuum of Care application process cannot be used for ex-offenders.

How Will You Provide Mentoring for the Released Prisoners Who You Will Be Serving? (10 points)

Mentoring is a key part of this initiative and we expect that you will be able to offer mentors to each of the released prisoners who desires these services. Discuss your plans for providing mentors to released prisoners. Describe any experience that you have in operating mentoring programs or how you will develop this capacity. Describe how the mentoring component will be administered and staffed. Describe how you will involve other local faith-based and community organizations in recruiting mentors for this project. Describe what training you will provide to mentors. Discuss who you will recruit to serve as mentors (i.e., former prisoners that have successfully reintegrated back into society).

How Will You Coordinate Alcohol and Drug Treatment and Other Health and Supportive Services to Released Prisoners Who Require Such Assistance? (10 points)

Provide examples of local partnerships that you have developed or will develop to secure treatment and support services for released prisoners. Because grant funds cannot be used to provide alcohol and drug treatment, give examples of other resources that are available to provide such services. Also give examples of local partnerships you have developed or will develop to provide physical and mental health services and provide letters of commitment detailing the partners' roles, where applicable. Many released prisoners will be under court orders to pay child support and/or restitution. How will you assist these individuals in complying with these court orders? How will you partner with agencies that serve ex-offenders, including SAMHSA, Veterans Affairs, etc.? Describe how your program will connect with workforce system programs to provide services to eligible veterans, such as Local Veterans' Employment Representatives (LVERs), Disabled Veterans Outreach Program (DVOP) specialists, and in particular, the Department of Veterans' Affairs Veterans' Integrated Service Network (VISN) including the Incarcerated Veteran Re-Entry Specialist that is assigned to VISN in the area being served and the programs provided to incarcerated veterans through the VISN.

For this criterion, applicants will be evaluated on how comprehensive and collaborative their program design is. Particular elements to be evaluated include:

- Partnerships with expected partners, including State criminal justice agencies, probation and parole, Workforce Investment Boards, housing partners, and other service providers (including alcohol and drug treatment and mental health services);
- Design of program elements, including employment and education placements, job training, connections to employers (particularly in high-growth, high-demand fields), and mentoring; and
- Description of asset mapping or similar strategies to locate and connect to existing resources in the area to provide support services.

3. How Have You Coordinated in the Past and How Do You Plan To Coordinate With State Criminal Justice Agencies, Probation, and Parole in the Operation of Your Program? (20 points)

Describe your plans for working with State criminal justice agencies, probation and parole in operating your program. Describe your plans for obtaining referrals from State criminal justice agencies (the majority of participants served by these grants should be direct referrals from the DOJ PRI grant) and in gaining permission to enter prisons for introductory meetings with prisoners soon to be released into your community. Describe how you plan to coordinate with parole and probation in providing post-release services for former prisoners. Applicants should provide letters of commitment detailing the roles of each partner and how participants will be referred if possible. Describe past experience and/or contracts in which you worked with the criminal justice agency in your State. Describe how you will partner collaboratively with the State criminal justice agency to meet the expected outcomes of this grant, including receiving referrals and on-going updates regarding participant recidivism from the criminal justice agency.

Applicants will be evaluated based on the following criteria:

- The existence of previously established relationships with criminal justice agencies and probation and parole; and
- The strategy for obtaining an on-going method of referrals for soon-to-be-released offenders.

4. What is the quality and experience of your organization to operate this initiative? (15 points)

Describe your organization and its qualifications for serving as the local FBCO in this initiative. How long has your organization been in existence in the area you plan to serve? What services and programs has it previously provided in the urban area to be served by the grant? Discuss the experience of the organization in operating re-entry and employment programs, including the results of those programs (in terms of individual service outcomes). Describe the qualifications of key staff persons of your organization who may work on this project, and their specific experience relating to this project. Also describe previous experience of the organization in operating grants from either Federal or non-Federal sources. Describe the fiscal controls in place in your organization. What is your organization's current annual budget? Also describe how you would expect to continue serving ex-offenders once the Federal grant funds have been expended. What is your organization's sustainability plan?

Applicants will be evaluated on the strength of their organizational experience. Particular criteria include:

- Length of time applicant has been operating in the identified urban area within the target county(ies);
- Previous experience of the applicant in serving ex-offenders with re-entry and employment services;
- Experience of key staff in relation to developing employment and education programming for re-entry populations; and
- The applicant's sustainability plan for continuing to serve this population.

II. Award Information

What type of assistance instrument will be awarded under this initiative?

Funds will be awarded under this initiative through grants for an initial period of 1 year, with up to two additional option years depending on the availability of funds and demonstrated performance. If funding is

available beyond the first 3 years, additional years of performance may be awarded through a competitive reevaluation based on satisfactory performance and/or other factors.

What is the expected number of awards?

DOL expects to award grants for 19 projects.

What is the total amount expected to be awarded through this announcement?

DOL expects to award a total of $5.7 million in initial grants through this announcement.

What is the expected amount of individual awards?

DOL expects that initial awards will be approximately $300,000.

III. Eligibility Information and Other Grant Specifications

A. Eligible Applicants

Am I an eligible applicant for these grants?

You are eligible to apply for the DOL grants if you are a faith-based or community organization and are located within or have a pre-existing staff presence in an urban community within the target county(ies) identified in the **SUMMARY** at the beginning of this solicitation.

Who is eligible to be served under these grants?

Individuals 18 years old and older who have been convicted as an adult and imprisoned pursuant to an Act of Congress or a State law, and who have never been convicted of a sex-related offense other than prostitution can be served with these grants. The majority of participants served by these grants should be direct referrals from the DOJ PRI grant. However, individuals who have been recruited from the community may also be served. Such recruits must be enrolled in the program within 180 days after their release from prison or a halfway house, except that up to 10 percent of individuals served can be enrolled over 180 days after their prison release. Services may be provided to individuals who have been released from prison and are residing in a halfway house. Participants referred from the DOJ grantees' pre-release programs will have been given a risk assessment but if the DOL grantee chooses to enroll additional participants from the community, these returning offenders should not have a violent presenting or past offense. The Grant Officer will consider the use of waivers to serve individuals with violent past or presenting offenses if necessary. These waivers would require the use of a validated risk assessment tool.

This program is subject to the provisions of the ''Jobs for Veterans Act,'' Public Law 107–288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the veterans priority statute and its effect on current employment and training programs, and additional guidance is available at the ''Jobs for Veterans Priority of Services Web site'' (*http://www.doleta.gov/programs/VETS/*).

B. Cost Sharing or Matching

Is cost sharing or matching required for these grants?

No, cost sharing or matching is not required, although leveraging of resources is strongly encouraged in order to maximize the impact of the project in the identified county. Applicants should describe what resources, new and existing, may support the goals of the project. While the failure to offer leveraged resources as a part of an application will not preclude consideration of the application, it will place the applicant at a competitive disadvantage over applicants that do so to the extent that an applicant's ability to arrange for the provision of separately funded housing, alcohol and drug treatment and other health and social services will be factored into the evaluation of the application. Leveraging of existing resources and committed partners are an integral part of the PRI program model and are necessary for a successful reentry program.

IV. Application and Submission Information

A. Address To Request Application Package

This SGA includes all information and links to forms needed to apply for grant funding.

B. Content and Form of Application Submission

What are the content and form of application submission?

The proposal must consist of two (2) separate and distinct parts, Parts I and II. Applications that fail to adhere to the instructions in this section will be considered non-responsive and may not be given further consideration. Applicants who wish to apply do not need to submit a Letter of Intent. The completed application package is all that is required.

Part I of the proposal is the Cost Proposal and must include the following three items:

- The Standard Form (SF) 424, ''Application for Federal Assistance'' (available at *http://www.doleta.gov/grants/find_grants.cfm*). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant will be considered the Authorized Representative of the applicant. In block 14 of the SF 424, the applicant must specify the single county(ies) in which they plan to serve. This designated county (or two in the instance of Louisiana) must be on the list of target counties that received a DOJ PRI grant this spring. The list can be found in the **SUMMARY** at the beginning of this solicitation. DOL will deem non-responsive any application that fails to designate the target county in which they will be operating.
- All applicants for Federal grant and funding opportunities are required to have a Data Universal Numbering System (DUNS) number provided by Dun and Bradstreet. See Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402, June 27, 2003. Applicants must supply their DUNS number on the SF 424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site, *http://www.dunandbradstreet.com*, or call 1–866–705–5711.
- The SF 424A Budget Information Form (available at *http://www.doleta.gov/grants/find_grants.cfm*). In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request. In addition, there should be a detailed back-up budget that includes the number of staff to be hired, delineated by position titles.

Please note that applicants that fail to provide the SF 424, SF 424A, and the budget narrative will be removed from consideration prior to the technical review process. If the proposal calls for integrating WIA or other Federal funds

or includes other leveraged resources, these funds should not be listed on the SF 424 or SF 424A Budget Information Form, but should be described in the budget narrative.

Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at *http://www07.grants.gov/agencies/forms_repository_information.jsp.*

Part II of the application is the Technical Proposal, which demonstrates the applicant's capabilities to plan and implement the Prisoner Re-entry Initiative in accordance with the provisions of this solicitation. The Technical Proposal is limited to twenty (20) double-spaced, single-sided, 8.5 inch x 11 inch pages with 12 point text font and one-inch margins. Applicants should number the Technical Proposal beginning with page number one. Any pages over the 20 page limit will not be reviewed. The guidelines for the content of the Technical Proposal are provided in Section I (D) of this SGA.

In addition, the applicant must provide letters of support from the criminal justice agencies which will release the prisoners and supervise their release in the community and the local Workforce Investment Board; a Time Line outlining project activities; and a two-page Executive Summary. These additional materials do not count against the 20-page limit for the Technical proposal, but may not exceed fifteen (15) pages. Any supplemental materials over this page limit will not be read.

Applications may be submitted electronically on *www.grants.gov* or in hard-copy via U.S. mail, professional overnight delivery service, or hand delivery. These processes are described in further detail in Section IV (C). Applicants submitting proposals in hard-copy must submit an original signed application (including the SF 424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL. Applicants submitting proposals in hard copy are also requested, though not required, to provide an electronic copy of the proposal on CD–ROM.

C. Submission Dates, Times, and Addresses

What is the closing date for applications?

The closing date for receipt of applications under this announcement is November 4, 2008. Applications must be received at the address below no later than 4 p.m. (Eastern Time). Applications sent by e-mail, telegram, or facsimile will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

To what address should I send my application?

To apply by mail, please submit one (1) blue-ink signed, typewritten original of the application and two (2) signed photocopies in one package to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Jeannette Flowers, Reference SGA/DFA PY–08–03, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Information about applying online through *http://www.grants.gov* can be found in the next paragraph of this section. Applicants are advised that mail delivery in the Washington area is delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

Applicants may apply online through grants.gov (*http://www.grants.gov*). It is strongly recommended that applicants applying online for the first time via grants.gov immediately initiate and complete the ''Get Registered'' registration steps at *http://www.grants.gov/applicants/get_registered.jsp*. These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic application submission in order to avoid unexpected delays that could result in the rejection of an application. It is highly recommended that online submissions be completed at least 3 working days prior to the date specified for the receipt of applications to ensure that the applicant still has the option to submit by overnight delivery service in the event of any electronic submission problems. If submitting electronically through grants.gov, the components of the application must be saved as either .doc, .xls or .pdf files.

Late Applications: Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, was properly addressed, and: (a) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application required to be received by the 20th of the month must be post marked by the 15th of that month) or (b) was sent by professional overnight delivery service or submitted on grants.gov to the addressee not later than one working day prior to the date specified for receipt of applications. An application submitted through grants.gov will not be considered ''received'' by the Department of Labor unless it is: electronically submitted on grants.gov prior to the deadline; ''validated'' by grants.gov; and forwarded by grants.gov to the Department of Labor. It is highly recommended that online submissions be completed three working days prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by professional overnight delivery service in the event of any electronic submission problems. Applicants take a significant risk by waiting until the last day to submit by grants.gov. ''Postmarked'' means a printed, stamped or otherwise placed impression that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

D. Intergovernmental Review

Is an Intergovernmental Review required?

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

E. Cost Principles

All proposal costs must be necessary and reasonable in accordance with Federal guidelines. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., 29 CFR 95.27; Non-Profit Organizations—OMB Circular A–122. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. Applicants will not be entitled to reimbursement of pre-award costs.

DOL grant funds must not be used to provide substance abuse treatment. Such treatment should be made

available to persons enrolled in the program using resources available through partnerships with other agencies. DOL grant funds must not be used to provide housing assistance to participants. It is expected that grantees will leverage existing community resources and provide referrals to housing assistance through community organizations and local agencies. DOL grant funds must not be used to provide assistance to participants to cover the cost of healthcare. It is expected that grantees will utilize existing resources in the community and refer participants to these providers. DOL grant funds cannot be used to pay for food to participants except as a needs-based payment through which the participant can purchase food or by providing food baskets or vouchers for food and household items as a supportive service to enrollees. In the instance of these needs-based payments, it is expected that the grantee will have a detailed policy in place regarding the allowability and frequency of such provisions and such payments should not exceed more than 1.5 percent of the grant program's total operating budget.

Indirect Costs. As specified in OMB Circular Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective. In order to utilize grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its Federal Cognizant Agency either before or shortly after the grant award.

Administrative Costs. Under the PRI, an entity that receives a grant to carry out a project or program may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct and indirect costs and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an indirect cost rate agreement from its Federal cognizant agency as specified above.

Salary and bonus limitations. In compliance with Pub. L. 109–234 and Pub. L. 110–5, none of the funds appropriated in Pub. L. 109–149, Pub. L. 110–5, or prior Acts under the heading ''Employment and Training'' that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109–149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A–133. See Training and Employment Guidance Letter number 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262*.

Legal Rules Pertaining to Inherently Religious Activities by Organizations that Receive Federal Financial Assistance. The government is generally prohibited from providing direct financial assistance for inherently religious activities (please see 29 CFR Part 2, Subpart D). These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities except as provided in those regulations. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Neutral, non-religious criteria that neither favor nor disfavors religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients.

A faith or community-based organization receiving ETA funds retains its independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith or community-based organization may use space in its facilities to provide secular programs or services funded with federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith or community-based organization that receives federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of ETA funded activities.

Faith and community-based organizations may also reference ETA Training and Employment Guidance Letter (TEGL) No. 01–05 (July 6, 2005), available at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2088*. *Faith and community-based organizations may learn about equal treatment and religion-related regulations through the DOL's new online training course* at Workforce3one (*http://www.workforce3one.org*). The course can be found by typing the key words—equal treatment—in the search box on the upper right hand corner of the page. If you are previously registered on this site, you can find the course directly at *http://www.workforce3one.org/public/_shared/detail.cfm?id=5566&simple=false*.

ETA Intellectual Property Rights. Applicants should note that grantees must agree to provide ETA a paid-up, nonexclusive and irrevocable license to reproduce, publish, or otherwise use for federal purposes all products developed or for which ownership was purchased under an award, including but not limited to curricula, training models, technical assistance products, and any related materials, and to authorize them to do so. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise.

Additional Requirements. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which are limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

F. Withdrawal of Applications

Applications may be withdrawn by written notice at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

V. Application Review Information

A. Evaluation Criteria

What will be the criteria for award?

Panelists will rate proposals based on the following criteria, which are explained in detail in Section I(D) of this SGA. These criteria and point values are:

1. What is the need for the project in the county to be served by the grant? (10 points)
2. What Is the Project Design and Service Strategy? (55 points)
3. How have you coordinated in the past and how do you plan to coordinate with State criminal justice agencies,

probation, and parole in the operation of your program? (20 points)

4. What is the quality and experience of your organization to operate this initiative? (15 points)

B. Review and Selection Process

How will applications be reviewed and selected?

Applications for the Prisoner Re-entry Initiative Grants will be accepted after the publication of this announcement until the closing date. A technical review panel will make a careful evaluation of applications against the criteria set forth in Section V(A) of this Solicitation. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. Up to 100 points may be awarded to an application, based on the required information described in detail in Section I(D) of this Solicitation. The ranked scores will serve as the primary basis for selection of applications for funding. If only one organization applies within a county, a review panel will assess that application and a technical acceptability determination will be made. If determined to be technically unacceptable, DOL reserves the right to not make an award within that county. Final selections will be based on what is most advantageous to the Government, and are contingent upon availability of funds. The panel results are advisory in nature and not binding on the Grant Officer, who may consider any information that comes to his attention. DOL may elect to award the grant(s) with or without prior discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer.

VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA homepage (*http://www.doleta.gov*). Applicants selected for award will be contacted directly before the grant's execution. Applicants not selected for award will be notified by mail.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees will be subject to all applicable Federal laws, regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions:

a. Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

b. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

c. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR Part 97 (Administrative Requirements).

d. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR Part 31 (Cost Principles), and 29 CFR Part 95 (Administrative Requirements).

e. All entities must comply with 29 CFR Parts 93 and 98, and, where applicable, 29 CFR Parts 96 and 99.

f. 29 CFR Part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

g. 29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

h. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

i. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

j. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

k. 29 CFR Part 36–Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

The following administrative standards and provisions may be applicable:

a. Workforce Investment Act—20 Code of Federal Regulations (CFR) Part 667. (General Fiscal and Administrative Rules);

b. 29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training; and

c. 29 CFR Part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998.

In accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code Section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

Note: Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

C. Special Program Requirements

Evaluation. DOL will require that the program or project participate in an evaluation of overall performance of Prisoner Re-entry Grants. To measure the impact of the Prisoner Re-entry Grants, ETA may arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make records on participants, employers and funding available, and to provide access to program operating personnel and participants, as specified by the evaluator(s) under the direction of ETA, including after the expiration date of the grant.

D. Reporting

The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (ETA–9130) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 45 days after the end of each calendar year quarter, including the last calendar quarter of the grant period. Grantees must use ETA's On-Line Electronic Reporting System.

Quarterly Performance Reports. FBCOs will be required to submit updated performance data on enrollment, services provided, placements, outcomes, and follow-up status. A government-procured MIS system will be provided to all grantees. Grantees will be required to have industry-standard computer hardware and high-speed Internet access in order to use the MIS system. Grant funds may be used with the prior approval of the Grant Officer to upgrade computer hardware and Internet access to enable projects to use the MIS system.

Quarterly Narrative Reports. The grantee must submit a quarterly narrative report to the designated Federal Project Officer within 30 days

after the end of each quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. DOL may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL reporting requirements. The quarterly progress report should be in narrative form and should include:

1. In-depth information on accomplishments, including project success stories, upcoming grant activities, and promising approaches and processes.

2. Progress toward performance outcomes, including updates on product, curricula, and training development.

Quarterly financial reports, quarterly performance reports, and quarterly narrative reports will all be provided electronically.

Final Report. A final report must be submitted no later than 60 days after the expiration date of the grant. This report must summarize project activities, employment outcomes, and related results of the training project, and should thoroughly document capacity building and training approaches. The final report should also include copies of all deliverables, e.g., curricula and competency models. Three copies of the final report must be submitted to ETA, and grantees must agree to use a designated format specified by DOL for preparing the final report. A Closeout Financial Status Report is due 90 days after the end of the grant period.

Record Retention. Applicants should be aware of Federal guidelines on record retention, which require grantees to maintain all records pertaining to grant activities for a period of not less than 3 years from the time of final grant closeout.

VII. Agency Contacts

For further information regarding this SGA, please contact Jeannette Flowers, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3332. (Please note this is not a toll-free number.) Applicants should fax all technical questions to (202) 693–2705 and must specifically address the fax to the attention of Jeannette Flowers and should include SGA/DFA PY 08–03, a contact name, fax and phone number, and e-mail address. This announcement is being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm*, at *http://www.grants.gov*, as well as the **Federal Register**.

VIII. Additional Resources and Other Information

Resources for the Applicant

DOL maintains a number of web-based resources that may be of assistance to applicants.

- The Workforce 3 One Web site, *http://www.workforce3one.org*, is a valuable resource for information about demand-driven projects of the workforce investment system, educators, employers, and economic development representatives.
- America's Service Locator (*http://www.servicelocator.org*) provides a directory of the nation's One-Stop Career Centers.
- Career Voyages (*http://www.careervoyages.gov*), a Web site targeted at youth, parents, counselors, and career changers, provides information about career opportunities in high-growth/high-demand industries.
- Applicants are encouraged to review ''Help with Solicitation for Grant Applications'' (*http://www.doleta.gov*).
- For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see ''Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government'' (*http://www.whitehouse.gov/government/fbci/guidance/index.html*).

Other Information

OMB Information Collection No. 1225–0086.

Expires September 30, 2009

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. PLEASE DO NOT RETURN THE COMPLETED APPLICATION TO THE OMB. SEND IT TO THE SPONSORING AGENCY AS SPECIFIED IN THIS SOLICITATION.

This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Signed at Washington, DC, this 29th day of August 2008.

James Stockton,

Employment and Training Administration, Grant Officer.

[FR Doc. E8–20570 Filed 9–4–08; 8:45 am]

BILLING CODE 4510–30–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 18 September 2008, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address, or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, August 28, 2008.

Thomas Luebke,

AIA, Secretary.

[FR Doc. E8–20522 Filed 9–4–08; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the

following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level employees:

Darren B. Ash, Deputy Executive Director for Corporate Management, Office of the Executive Director for Operations.

R.W. Borchardt, Executive Director for Operations.

Elmo E. Collins, Jr., Regional Administrator, Region IV.

Karen D. Cyr, General Counsel.

Margaret M. Doane, Director, Office of International Programs.

James E. Dyer, Chief Financial Officer.

Timothy F. Hagan, Director, Office of Administration.

Michael R. Johnson, Director, Office of New Reactors.

Eric J. Leeds, Director, Office of Nuclear Reactor Regulation.

Bruce S. Mallet, Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations.

Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs.

Martin J. Virgilio, Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs.

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Stephen G. Burns, Deputy General Counsel, Office of the General Counsel.

Brian W. Sheron, Director, Office of Nuclear Regulatory Research.

Roy P. Zimmerman, Director, Office of Nuclear Security and Incident Response.

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

DATES: *Effective Date:* September 5, 2008.

FOR FURTHER INFORMATION CONTACT: Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–2076.

Dated at Bethesda, Maryland, this 26th day of August 2008.

For the U.S. Nuclear Regulatory Commission,

James F. McDermott,

Secretary, Executive Resources Board.

[FR Doc. E8–20563 Filed 9–4–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Anti-Counterfeiting Trade Agreement (ACTA): Notice of Public Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public meeting.

SUMMARY: The Office of the United States Trade Representative (USTR), together with key trading partners, is negotiating an Anti-Counterfeiting Trade Agreement with the objective of strengthening international cooperation, enforcement practices, and participants' legal frameworks to address counterfeiting and piracy. As part of this effort, USTR, together with the U.S. Department of Commerce, is organizing a public meeting to consult with interested parties on the initiative. The purposes of the meeting will be to inform stakeholders about ACTA and to receive comments from stakeholders about their views regarding this initiative. Interested parties should review the section on requirements for participation below.

DATES: The meeting will be held on Monday, September 22, 2008, 10 a.m.–12 noon.

ADDRESSES: U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW., Washington, DC 20230. The meeting will be held in the Main Auditorium.

FOR FURTHER INFORMATION CONTACT: Rachel S. Bae, Director for Intellectual Property and Innovation, Office of the United States Trade Representative, at (202) 395–4510.

SUPPLEMENTARY INFORMATION: On October 23, 2007, USTR announced that the United States, along with a group of trading partners, would pursue negotiation of a new Anti-Counterfeiting Trade Agreement (ACTA) to enhance international leadership in the fight against IPR counterfeiting and piracy. The United States and other interested parties intend to seek an agreement with provisions in three main areas: International cooperation, enforcement practices, and the legal framework for IPR enforcement.

A principal goal of the ACTA is to establish, among governments committed to strong IPR protection, a common standard for IPR enforcement to combat global infringements of IPR particularly in the context of counterfeiting and piracy that addresses today's challenges, in terms of increasing international cooperation, strengthening the framework of practices that contribute to effective enforcement of IPRs, and strengthening relevant IPR enforcement measures themselves. A fact sheet providing further details on the ACTA can be found on the USTR Web site at: *http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2008/asset_upload_file760_15084.pdf*

Requirements for Participation: Prior registration is required. To register, please send all required information by Wednesday, September 17, 2008 to the following e-mail address: *Amanda.Wilson@mail.doc.gov.* Required information for U.S. Citizens: Full Name and Name of Organization (if appropriate). Required information for Non-U.S. Citizens: Full Name, Gender, Title, Name of Organization (if appropriate), Date of Birth, Place of Birth, Passport Number, Place of Residence, Place of Citizenship. All attendees must bring a government-licensed photo identification upon arrival.

Due to limited space in the room, participation will be on a first-come, first-serve basis. The participation of more than one representative from an organization may also be conditioned on the total number of participants. Those unable to participate in the meeting and/or who wish to present their positions in writing may send their comments electronically no later than Wednesday, September 17, 2008, to the following e-mail address: *ACTA@ustr.eop.gov.*

Requirements for Comments: Comments must be in English. No submissions will be accepted via postal service mail or facsimile. Documents should be submitted as either WordPerfect, MS Word, Adobe, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable as Quattro Pro or Excel files. A submitter requesting that information contained in a comment be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. A non-confidential version of the comment must also be provided. For any document containing business confidential information, the file name of the business confidential version should begin with the characters ''BC–'', and the file name of the public version should begin with the character ''P–''. The ''P–'' or ''BC–'' should be followed by the name of the submitter. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the

same file as the submission itself, and not as separate files.

Public Inspection of Submissions: Within one business day of receipt, non-confidential submissions will be placed in a public file, open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Jacqueline Caldwell at (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Rachel S. Bae,

Director for Intellectual Property and Innovation.

[FR Doc. E8–20572 Filed 9–4–08; 8:45 am]

BILLING CODE 3190–W8–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 15, 2008 Public Hearing

Time and Date: 2 p.m., Monday, September 15, 2008.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing open to the Public at 2 p.m.

Purpose: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Thursday, September 11, 2008. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Thursday, September 11, 2008. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Contact Person for Information: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov*.

Dated: September 3, 2008.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. E8–20753 Filed 9–3–08; 4:15 pm]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 18, 2008 Board of Directors Meeting

Time and Date: Thursday, September 18, 2008, 10 a.m. (Open Portion); 10:15 a.m. (Closed Portion).

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Meeting OPEN to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

Matters To Be Considered:

1. President's Report
2. Approval of July 17, 2008 Minutes (Open Portion)

Further Matters To Be Considered: (Closed to the Public 10:15 a.m.)

1. Report from Audit Committee
2. Finance Project—Costa Rica, El Salvador, Guatemala, Honduras
3. Finance Project—Liberia
4. Finance Project—South Africa
5. Finance Project—Mexico, Nicaragua, El Salvador, Peru, Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Cambodia, Bosnia, Kenya
6. Finance Project—Botswana
7. Finance Project—Bulgaria and the Balkans
8. Finance Project—Asia
9. Finance Project—South Asia
10. Finance Project—Global
11. Finance Project—Global
12. Finance Project—Global
13. Finance Project—Global
14. Finance Project—Latin America
15. Finance Project—Latin America
16. Finance Project—Latin America
17. Finance Project—Mexico and Central America
18. Finance Project—Central and South America
19. Approval of July 17, 2008 Minutes (Closed Portion)
20. Pending Major Projects
21. Reports

Contact Person for Information: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: September 3, 2008.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. E8–20754 Filed 9–3–08; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–17D–1; SEC File No. 270–231; OMB Control No. 3235–0229.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 17(d) (15 U.S.C. 80a–17(d)) of the Investment Company Act of 1940 (''Act'') authorizes the Commission to adopt rules that protect funds and their security holders from overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan. Rule 17d–1 under the Act (17 CFR 270.17d–1) prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Paragraph (d)(3) of the rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (''investments'') made by a small business investment company (''SBIC'') and an affiliated bank, provided that reports about the investments are made on forms the Commission may prescribe. Rule 17d–2 (17 CFR 270.17d–2) designates Form N–

17D–1 (17 CFR 274.200) (''form'') as the form for reports required by rule 17d–1.

SBICs and their affiliated banks use form N–17D–1 to report any contemporaneous investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have the potential for self dealing and other forms of overreaching by affiliated persons at the expense of shareholders.

Form N–17D–1 requires SBICs and their affiliated banks to report identifying information about the small business concern and the affiliated bank. The report must include, among other things, the SBIC's and affiliated bank's outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the affiliated bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of the affiliated person of the SBIC or the affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration the affiliated person has received or will receive.

Up to five SBICs may file the form in any year.[1] The Commission estimates the burden of filling out the form is approximately one hour per response and would likely be completed by an accountant or other professional. Based on past filings, the Commission estimates that no more than one SBIC is likely to use the form each year. Most of the information requested on the form should be readily available to the SBIC or the affiliated bank in records kept in the ordinary course of business, or with respect to the SBIC, pursuant to the recordkeeping requirements under the Act. Commission staff estimates that it should take approximately one hour for an accountant or other professional to complete the form.[2] The estimated total annual burden of filling out the form is 1 hour, at an estimated total annual cost of $185.[3] The Commission will not keep responses on Form N–17D–1 confidential.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/ Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

August 27, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20616 Filed 9–4–08; 8:45 am]

BILLING CODE 8010–01–P

[1] As of May 22, 2008, five SBICs were registered with the Commission.

[2] This estimate of hours is based on past conversations with representatives of SBICs and accountants that have filed the form.

[3] Commission staff estimates that the annual burden would be incurred by a senior accountant with an average hourly wage rate of $185 per hour. See Securities Industry Association and Financial Markets Association, Report on Management and Professional Earnings in the Securities Industry—2007 (2007), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–8b–4, SEC File No. 270–180, OMB Control No. 3235–0247.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form N–8b–4 (17 CFR 274.14) is the form used by face-amount certificate companies to comply with the filing and disclosure requirements imposed by Section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)). Form N–8b–4 requires disclosure about the organization of a face-amount certificate company, its business and policies, its investment in securities, its certificates issued, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with Section 8(b) of the Investment Company Act of 1940.

Based on the Commission's industry statistics, the Commission estimates that there would be approximately 1 annual filing on Form N–8b–4. The Commission estimates that each registrant filing a Form N–8b–4 would spend 171 hours in preparing and filing the Form and that the total hour burden for all Form N–8b–4 filings would be 171 hours. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8b–4 is mandatory. The information provided on Form N–8b–4 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/ Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 27, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20617 Filed 9–4–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor

Education and Advocacy, Washington, DC 20549–0213.

Revision and Extension:

Rule 203A–2, SEC File No. 270–501, OMB Control No. 3235–0559.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA'') the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 203A–2(f),[1] which is entitled ''Internet Investment Advisers,'' exempts from the prohibition on Commission registration an Internet investment adviser who provides investment advice to all of its clients exclusively through computer software-based models or applications termed under the rule as ''interactive Web sites.'' These advisers generally would not meet the statutory thresholds set out in section 203A of the Advisers Act [2]—they do not manage $25 million or more in assets and do not advise registered investment companies. Eligibility under rule 203A–2(f) is conditioned on an adviser maintaining in an easily accessible place, for a period of not less than five years from the filing of Form ADV relying on the rule,[3] a record demonstrating that the adviser's advisory business has been conducted through an interactive Web site in accordance with the rule.[4]

This record maintenance requirement is a ''collection of information'' for PRA purposes. The Commission believes that approximately 39 advisers are registered with the Commission under rule 203A–2(f), which involves a recordkeeping requirement manifesting in approximately four burden hours per year per adviser and results in an estimated 156 total burden hours (4 × 39) for all advisers.

This collection of information is mandatory, as it is used by Commission staff in its examination and oversight program in order to determine continued Commission registration eligibility of advisers registered under this rule. Responses generally are kept confidential pursuant to section 210(b) of the Advisers Act.[5] An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 27, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20618 Filed 9–4–08; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 275.203A–2(f). Included in rule 203A–2(f) is a limited exception to the interactive Web site requirement which allows these advisers to provide investment advice to no more than 14 clients through other means on an annual basis. 17 CFR 275.203A–2(f)(1)(i). The rule also precludes advisers in a control relationship with the SEC-registered Internet adviser from registering with the Commission under the common control exemption provided by rule 203A–2(c) (17 CFR 275.203A–2(c)). 17 CFR 275.203A–2(f)(1)(iii).

[2] 15 U.S.C. 80b–3a(a).

[3] The five-year record retention period is the same recordkeeping retention period for all advisers imposed under rule 204–2 of the Adviser Act. See rule 204–2 (17 CFR 275.204–2).

[4] 17 CFR 275.203A–2(f)(1)(ii).

[5] 15 U.S.C. 80b–10(b).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28372; 812–13357–01]

John Hancock Income Securities Trust, et al.; Notice of Application

August 29, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

APPLICANTS: John Hancock Income Securities Trust, John Hancock Investors Trust, John Hancock Patriot Premium Dividend Fund II, John Hancock Preferred Income Fund, John Hancock Preferred Income Fund II, John Hancock Preferred Income Fund III, John Hancock Tax-Advantaged Dividend Income Fund, John Hancock Tax-Advantaged Global Shareholder Yield Fund (the ''Funds'') and John Hancock Advisers, LLC (the ''Adviser'').

Filing Dates: January 18, 2007, March 5, 2007, June 1, 2007, October 30, 2007 and July 18, 2008.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 23, 2008, and should be accompanied by proof of service on applicants, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; applicants, 601 Congress Street, Boston, MA 02210–2805.

FOR FURTHER INFORMATION CONTACT: Wendy Friedlander, Senior Counsel, at (202) 551–6837, or James M. Curtis, Branch Chief, at (202) 551–6825 (Division of Investment Management, Office of Chief Counsel).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. Each Fund is a registered closed-end management investment company organized as a Massachusetts business trust.[1] The Funds are authorized to issue common stock and preferred stock. Applicants believe that the investors in the common stock of the

[1] Applicants request that any order issued granting the relief requested in the application also apply to any closed-end investment company that in the future: (a) is advised by the Adviser (including any successor in interest) or by any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser; and (b) complies with the terms and conditions of the requested order. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

Funds may prefer an investment vehicle that provides a steady cash flow by making regular or monthly distributions. In May or June 2008, each Fund that had issued preferred stock redeemed all outstanding preferred stock. In the future, however, the Funds may issue preferred stock again.

2. The Adviser is registered under the Investment Advisers Act of 1940 and is responsible for the overall management of the Funds. The Adviser is a wholly-owned subsidiary of John Hancock Financial Services, Inc., a subsidiary of Manulife Financial Corporation.

3. Applicants represent that prior to relying on the requested order, the Board of Trustees (the ''Board'') of each Fund, including a majority of the members of each of the Boards who are not ''interested persons'' of each Fund as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), shall have requested and considered, and the Adviser shall have provided, information regarding the purpose and terms of a proposed distribution policy, the likely effects of such policy on the respective Fund's long-term total return (in relation to market price and net asset value (''NAV'') per common share) and the relationship between the Fund's distribution rate on its common shares under the policy and the Fund's total return on NAV per share. Applicants state that the Independent Trustees of each Fund shall also consider what conflicts of interest the Adviser and the affiliated persons of the Adviser and each Fund might have with respect to the adoption or implementation of such policy. Applicants further state that after considering such information the Board, including the Independent Trustees, of each Fund shall approve a distribution policy and related plan with respect to each Fund's common shares (a ''Plan'') and shall determine that such policy and Plan are consistent with the relevant Fund's investment objectives and in the best interests of such Fund's common stockholders.

4. Applicants state that the purpose of each proposed Plan would be to permit the relevant Fund to distribute to its respective common stockholders, over the course of each year, through periodic distributions as nearly equal as practicable and any required special distributions, an amount closely approximating the total taxable income of the Fund during such year and, if so determined by its Board, all or a portion of the returns of capital paid by portfolio companies to the Fund during such year. Applicants represent that each Fund would distribute to its respective common stockholders a fixed monthly percentage or amount under its proposed Plan, which percentage or amount may be adjusted from time to time. Applicants state that the minimum annual distribution rate with respect to a Fund's common shares under each Plan would be independent of the Fund's performance during any particular period but would be expected to correlate with the Fund's performance over time. Applicants explain that each distribution on the common stock would be at the stated rate then in effect, except for extraordinary distributions and potential increases or decreases in the final distribution periods in light of the Fund's performance for the entire calendar year and to enable the Fund to comply with the distribution requirements of subchapter M of the Internal Revenue Code of 1986 (the ''Code'') for the calendar year. Applicants expect that over time the NAV distribution rate with respect to a Fund's common shares will approximately equal that Fund's total return on NAV.

5. Applicants represent that, prior to the implementation of a Plan, the Board of each Fund shall adopt policies and procedures under rule 38a–1 under the Act that are reasonably designed to ensure that all notices sent to stockholders with distributions under the Plan (''Notices'') comply with condition II below, and that all other written communications by a Fund or its agents regarding distributions under the Plan include the disclosure required by condition III below. Applicants state that the Board of each Fund also will adopt policies and procedures that require the Fund to keep records that demonstrate the Fund's compliance with all of the conditions of the requested order and that are necessary for each Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its Notices.

Applicants' Legal Analysis

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once each year. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the one of the concerns underlying section 19(b) and rule 19b–1 is that stockholders might be unable to differentiate between regular distributions of capital gains and distributions of investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that a separate statement showing the sources of a distribution (*e.g.*, estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital) accompany any distributions (or the confirmation of the reinvestment of distributions) estimated to be sourced in part from capital gains or capital. Applicants state that the same information also is included annual reports to stockholders and on its IRS Form 1099–DIV, which is sent to each common and preferred stockholder who received distributions during the year.

4. Applicants further state that each Fund will make the additional disclosures required by the conditions set forth below, and each of them will adopt compliance policies and procedures in accordance with rule 38a–1 to ensure that all required Notices and disclosures are sent to stockholders. Applicants argue that by providing the information required by section 19(a) and rule 19a–1, and by complying with the procedures that will be adopted under each Plan and the conditions listed below, each Fund will ensure that each Fund's stockholders are provided sufficient information to understand that their periodic distributions are not tied to the Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Applicants also state that compliance with each Fund's compliance procedures and condition III set forth below will ensure that prospective stockholders and third parties are provided with the same information. Accordingly, applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford stockholders no extra protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices including, in particular, the practice of urging an investor to purchase stock of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that the ''selling the dividend'' concern should not apply to closed-end investment companies, which do not continuously distribute shares. According to applicants, if the underlying concern extends to secondary market purchases of stock of closed-end funds that are subject to a large upcoming capital gains distribution, adoption of a Plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that common stock of closed-end funds that invest primarily in equity securities often trades in the marketplace at a discount to the fund's NAV. Applicants believe that this discount may be reduced for closed-end funds that pay relatively frequent dividends on their common stock at a consistent rate, whether or not those dividends contain an element of long-term capital gain.

7. Applicants assert that the application of rule 19b–1 to a Plan actually could have an undesirable influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the implementation of a Plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants thus assert that the limitation on the number of capital gains distributions that a fund may make with respect to any one year imposed by rule 19b–1, may prevent the efficient operation of a Plan whenever that fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. In addition, Applicants assert that rule 19b–1 may cause fixed regular periodic distributions under a Plan to be funded with returns of capital [2] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise could be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b–1, a fund may be required to make total distributions in excess of the annual amount called for by its Plan, or to retain and pay taxes on the excess amount. Applicants thus assert that the requested order would minimize these effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that *Revenue Ruling 89–81* under the Code requires that a fund that has both common stock and preferred stock outstanding designate the types of income, *e.g.*, investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of *Revenue Ruling 89–81,* whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with *Revenue Ruling 89–81.*

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer and *Revenue Ruling 89–81* determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their shares to change.

12. Applicants request an order under section 6(c) granting an exemption from the provisions of section 19(b) and rule 19b–1 to permit each Fund's common stock to distribute periodic capital gains dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common stock and as often as specified by or determined in accordance with the terms thereof in respect of its preferred stock.[3]

Applicants' Conditions

Applicants agree that, with respect to each Fund seeking to rely on the order, the order will be subject to the following conditions:

I. *Compliance Review and Reporting.* The Fund's chief compliance officer will: (a) Report to the fund Board, no less frequently than once every three months or at the next regularly scheduled quarterly board meeting, whether (i) the Fund and the Adviser have complied with the conditions to the requested order, and (ii) a Material Compliance Matter, as defined in rule 38a–1(e)(2), has occurred with respect to compliance with such conditions; and (b) review the adequacy of the policies and procedures adopted by the Fund no less frequently than annually.

II. Disclosures To Fund Stockholders

A. Each Notice to the holders of a Fund's common stock, in addition to the information required by section 19(a) and rule 19a–1:

1. Will provide, in a tabular or graphical format:

(a) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

[2] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

[3] Applicants state that a future fund that relies on the requested order will satisfy each of the representations in the appilcation except that such representations will be made in respect of actions by the board of directors of such future fund and will be made at a future time.

(b) the fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(c) the average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month prior to the most recent distribution declaration date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date; and

(d) the cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution declaration date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

2. will include the following disclosure:

(a) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the fund's Plan'';

(b) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income' ''; and

(c) ''The amounts and sources of distributions reported in this Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for [accounting and] tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.''

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

B. On the inside front cover of each report to stockholders under rule 30e–1 under the Act, the Fund will:

1. Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

2. include the disclosure required by condition II.A.2.a above;

3. state, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to Fund stockholders; and

4. describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

C. Each report provided to stockholders under rule 30e–1 and each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

III. Disclosure to Stockholders, Prospective Stockholders and Third Parties:

A. Each Fund will include the information contained in the relevant Notice, including the disclosure required by condition II.A.2 above, in any written communication (other than a Form 1099) about the Plan or distributions under the Plan by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund common stockholder, prospective common stockholder or third-party information provider;

B. Each Fund will issue, contemporaneously with the issuance of any Notice, a press release containing the information in the Notice and will file with the Commission the information contained in such Notice, including the disclosure required by condition II.A.2 above, as an exhibit to its next filed Form N–CSR; and

C. Each Fund will post prominently a statement on its (or its adviser's) Web site containing the information in each Notice, including the disclosure required by condition II.A.2 above, and will maintain such information on such Web site for at least 24 months.

IV. *Delivery of 19(a) Notices to Beneficial Owners:* If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by a Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the Notice to all beneficial owners of the Fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the Notice to each beneficial owner of the Fund's common stock; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the Notice to such beneficial owners.

V. *Additional Board Determinations for Funds Whose Stock Trades at a Premium:* If:

A. a Fund's common stock has traded on the exchange that it primarily trades on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common stock as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

B. the Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

1. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Trustees:

(a) Will request and evaluate, and the Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(b) will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and in the best interests of the Fund and its stockholders, after considering the information in condition V.B.1.a above; including, without limitation:

(1) Whether the Plan is accomplishing its purpose(s);

(2) the reasonably foreseeable effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common stock; and

(3) the Fund's current distribution rate, as described in condition V.B above, compared to the Fund's average annual total return over the 2-year period, as described in condition V.B, or such longer period as the Board deems appropriate; and

(c) based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

2. The Board will record the information considered by it and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

VI. *Public Offerings:* The Fund will not make a public offering of the Fund's common stock other than:

A. A rights offering below net asset value to holders of the Fund's common stock;

B. an offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

C. an offering other than an offering described in conditions VI.A and VI.B above, unless, with respect to such other offering:

1. the Fund's average annual distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution declaration date,[4] expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date; [5] and

2. the transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified in accordance with the terms of any outstanding preferred stock that such Fund may issue.

VII. *Amendments to Rule 19b–1:* The requested relief will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20614 Filed 9–4–08; 8:45 am]

BILLING CODE 8010–01–P

[4] If the fund has been in operation fewer than two years, the measured period will be immediately following the fund's first public offering.

[5] If the fund has been in operation fewer than five years, the measured period will be immediately following the fund's first public offering.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28370; 812–13381]

PIMCO Municipal Income Fund, et al.; Notice of Application

August 29, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to make a greater number of capital gains distributions to holders of shares of their auction market preferred stock than is permitted by section 19(b) of the Act and rule 19b–1 under the Act to the extent necessary to comply with Internal Revenue Ruling 89–81, 1989–1 C.B. 226 (''Revenue Ruling 89–81'') under the Internal Revenue Code of 1986 (the ''Code'').

APPLICANTS: PIMCO Municipal Income Fund, PIMCO Municipal Income Fund II, PIMCO Municipal Income Fund III, PIMCO California Municipal Income Fund, PIMCO California Municipal Income Fund II, PIMCO California Municipal Income Fund III, PIMCO New York Municipal Income Fund, PIMCO New York Municipal Income Fund II, PIMCO New York Municipal Income Fund III, PIMCO Municipal Advantage Fund Inc., PIMCO Corporate Income Fund, PIMCO Corporate Opportunity Fund, PIMCO High Income Fund, Nicholas-Applegate Convertible & Income Fund, Nicholas-Applegate Convertible & Income Fund II, PIMCO Floating Rate Income Fund, PIMCO Floating Rate Strategy Fund (collectively, the ''Current Funds''), and Allianz Global Investors Fund Management LLC (''AGIFM'').

FILING DATES: The application was filed on May 2, 2007 and amended on January 10, 2008 and August 29, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 26, 2008 and should be accompanied by proof of service on the applicants 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o AGIFM, 49th Floor, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. Each of the Current Funds is organized as a Massachusetts business trust or Maryland corporation. Each of the Current Funds is registered under the Act as a closed-end management investment company. AGIFM, an investment adviser registered under the Investment Advisers Act of 1940, serves as the investment adviser to each Current Fund. Each Current Fund has outstanding one class of common stock that trades on the New York Stock Exchange. Each Current Fund also has outstanding one or more series of preferred stock that pays out distributions at a rate generally set at periodic auctions (''Auction Market

Preferred Stock''). Applicants request that the order apply to any registered closed-end management investment company currently advised or to be advised in the future by AGIFM (including any successor in interest) [1] or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with AGIFM that determines to rely on the requested relief in the future (such investment companies, the ''Future Funds'' and together with the Current Funds, the ''Funds'').[2]

2. The board of directors or trustees of each Fund (a ''Board'') has set or will set the initial dividend rate for each series of Auction Market Preferred Stock. Subsequently, each Fund pays or will pay dividends generally at seven day intervals (or at such other interval or intervals as the Fund's organizational documents permit) on its Auction Market Preferred Stock at a rate determined by auction or, under certain circumstances, at the maximum rate.[3]

3. Each Fund will make annual distributions of realized long-term capital gains, if any, to both the holders of its common stock and Auction Market Preferred Stock. Distributions of long-term capital gains are designed to comply with Revenue Ruling 89–81. Depending upon the amount of long-term capital gains realized in a fiscal year, the period of time between auctions, and the amount of the dividend as set by auction, each Fund may be required to make a greater number of long-term capital gains distributions to the holders of its Auction Market Preferred Stock than is permitted by section 19(b) and rule 19b–1 to comply with Revenue Ruling 89–81. Each Fund will make distributions of long-term capital gains to common stockholders in compliance with section 19(b) and rule 19b–1.

4. Applicants apply for an order pursuant to section 6(c) of the Act to exempt distributions of long-term capital gains that are made by the Funds to the holders of their Auction Market Preferred Stock in any one taxable year from the provisions of section 19(b) and rule 19b–1 to the extent necessary to comply with Revenue Ruling 89–81; provided that each Fund maintains in effect a distribution policy calling for periodic distributions to the holders of its Auction Market Preferred Stock (*i.e.*, at seven day intervals or such other interval as specified in the organizational document creating such Auction Market Preferred Stock) at the rates determined by the Board at the time a series of Auction Market Preferred Stock is issued initially, and, thereafter pursuant to auction or at the maximum rate.

Applicants' Legal Analysis

1. Section 19(b) of the Act generally makes it unlawful for any registered company to make long-term capital gains distributions more than once each year. Rule 19b–1 under the Act limits the number of capital gains dividends, as defined in the Code (''distributions''), that a registered investment company may make with respect to any one taxable year to one, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Revenue Ruling 89–81 requires a regulated investment company that has two or more classes of stock to make designations of various types of income in the same proportion as the total dividends distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a Fund realizes a long-term capital gain with respect to a given tax year, the Fund designates the required proportionate share of such capital gain to be included in the dividends on its Auction Market Preferred Stock and common stock. Each Fund calculates the ratio by dividing the total dividends paid to holders of each series of its Auction Market Preferred Stock during a taxable year by the total dividends paid to all classes during that year. Each Fund then declares and distributes designated long-term capital gains dividends to the holders of its common stock and Auction Market Preferred Stock in proportion to this ratio.

3. Applicants state that under certain circumstances, a Fund will be able to comply with both Revenue Ruling 89–81 and rule 19b–1. For example, if the entire dividend payment set at auction distributes in a single dividend the full amount of long-term capital gains required to be distributed by Revenue Ruling 89–81, the Fund will comply with both Revenue Ruling 89–81 and rule 19b–1. Applicants assert, however, that depending upon the amount of a Fund's realized long-term capital gains in a taxable year, the period of time between auctions, the number of series of its Auction Market Preferred Stock outstanding, and the amount of the dividend set pursuant to an auction, a Fund may be required to make a greater number of long-term capital gains distributions to the holders of its Auction Market Preferred Stock under Revenue Ruling 89–81 than is permitted under section 19(b) and rule 19b–1. Applicants explain that while rule 19b–1 does give regulated investment companies some flexibility with respect to long-term capital gains distributions, a Fund could have used all of the exceptions provided by rule 19b–1 and, because it would need to make additional distributions to the holders of series of its Auction Market Preferred Stock, be unable to comply with Revenue Ruling 89–81, section 19(b) and rule 19b–1 with respect to its Auction Market Preferred Stock.

4. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of rule 19b–1 was that investors might be unable to distinguish between regular distributions of capital gains and distributions of investment income. In the case of Auction Market Preferred Stock, applicants state there is little chance for investor confusion since investors expect to receive only the cash amount representing the specified dividend distribution for any particular dividend period and the dividend rate is set through an auction process. With respect to each distribution to the holders of Auction Market Preferred Stock, applicants state that the Current Funds have adopted, and any Future Fund will adopt, procedures designed to comply with the disclosure requirements set forth in section 19(a) of the Act and rule 19a–1 under the Act. Applicants state that in accordance with such procedures, when the Current Funds or their service providers determine or reasonably estimate that a distribution will be comprised of a source other than the sources described in sections 19(a)(1) and 19(a)(2) of the Act, the Current Funds or their service providers include the source information required by rule 19a–1 on the wire confirmation that accompanies the electronic transfer of funds, which represents payment of the distribution. The Current Funds or their service

[1] A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] All existing registered closed-end management investment companies that currently intend to rely on the requested order are named as applicants. Any Future Fund that relies on the order will comply with the terms of the application.

[3] The maximum rate for a series of Auction Market Preferred Stock has been established or will be established in the organizational documents creating the applicable series of Auction Market Preferred Stock, by reference to independent lending rates. The dividend rate will be the maximum rate when sufficient clearing bids have not been made in an auction or an auction is unable to be held for any reason on the date the auction is scheduled to occur.

providers include a request that the recipient send the source information to the beneficial shareholder if the recipient is other than the beneficial shareholder of the stock to which the notice relates.

5. Another concern underlying section 19(b) and rule 19b–1 is that frequent long-term capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend (''selling the dividend'') where the dividend results in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicants state that the ''selling the dividend'' concern is not applicable to Auction Market Preferred Stock, which entitles a holder to a specified periodic dividend and no more, and like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment.

6. Applicants state that another concern leading to the adoption of section 19 and rule 19b–1, an increase in administrative costs, is not present because the Funds will make the same number of distributions with respect to their Auction Market Preferred Stock regardless of whether the characterization of such distributions is income or long-term capital gains.

7. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or class or classes of any persons, securities, or transactions from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief satisfies this standard.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20615 Filed 9–4–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28371]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 29, 2008.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August, 2008. A copy of each application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant 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 the 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 who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

For Further Information Contact: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Credit Suisse Japan Equity Fund, Inc. [File No. 811–7371]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 22, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $48,327 incurred in connection with the liquidation were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser. Applicant has retained $41,722 in cash for the payment of outstanding expenses.

Filing Date: The application was filed on July 24, 2008.

Applicant's Address: c/o Credit Suisse Asset Management, LLC, Eleven Madison Ave., New York, NY 10010.

AIM Select Real Estate Income Fund [File No. 811–21048]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 12, 2007, applicant transferred its assets to a corresponding series of AIM Counselor Series Trust, based on net asset value. Expenses of $502,800 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on August 8, 2008.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

SEI Opportunity Master Fund, L.P. [File No. 811–21352]

Summary: Applicant, a closed-end investment company and a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 23, 2008, applicant made a final liquidating distribution to its three feeder funds, based on net asset value. Expenses of $3,250 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on August 8, 2008.

Applicant's Address: One Freedom Valley Dr., Oaks, PA 19456.

CGM Capital Development Fund [File No. 811–933]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 27, 2008, applicant transferred its assets to CGM Focus Fund, a series of CGM Trust, based on net asset value. Expenses of $335,000 incurred in connection with the reorganization were paid by Capital Growth Management Limited Partnership, applicant's investment adviser.

Filing Date: The application was filed on August 11, 2008.

Applicant's Address: One International Place, Boston, MA 02110.

AllianceBernstein International Research Growth Fund, Inc. [File No. 811–8527]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 25, 2008, applicant transferred its assets to AllianceBernstein International Growth Fund, Inc., based on net asset value. Expenses of $269,000 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on August 11, 2008.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

UBS Health Sciences Fund, L.L.C. [File No. 811–9985]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 19, 2008, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $11,045 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on June 30, 2008 and amended on August 15, 2008.

Applicant's Address: c/o UBS Financial Services, Inc., 51 West 52nd St., New York, NY 10019.

IQ Tax Advantaged Dividend Income Fund Inc. [File No. 811–21555]; S&P 500 GEAREDSM Fund V Inc. [File No. 811–21692]; NASDAQ–100 GEAREDSM Fund Inc. [File No. 811–21693]; S&P 500 GEAREDSM Fund II Inc. [File No. 811–21794]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applications were filed on July 24, 2008.

Applicants' Address: 2 World Financial Center, 7th Floor, 225 Liberty St., New York, NY 10281.

Eaton Vance Prime Rate Reserves [File No. 811–5808]; EV Classic Senior Floating-Rate Fund [File No. 811–7946]; Eaton Vance Advisers Senior Floating-Rate Fund [File No. 811–8671]; Eaton Vance Institutional Senior Floating-Rate Fund [File No. 811–9249]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 14, 2008, each applicant transferred its assets to Eaton Vance Floating-Rate Advantage Fund, a series of Eaton Vance Mutual Funds Trust, based on net asset value. Expenses of $240,232, $238,662, $88,464 and $30,397, respectively, incurred in connection with the reorganizations were paid by applicants.

Filing Date: The applications were filed on July 23, 2008.

Applicants' Address: The Eaton Vance Building, 255 State St., Boston, MA 02109.

Sage Life Investment Trust [File No. 811–8623]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 29, 2003, Applicant's board of directors approved Applicant's liquidation. On May 30, 2003, Applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $35,050.15 incurred in connection with the liquidation were paid by Applicant and its investment advisor, Sage Advisors, Inc. Applicant has no assets or liabilities and is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Dates: The application was filed on December 24, 2003, and amended on June 24, 2008.

Applicant's Address: 175 King Street, Armonk, New York, 10504.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20550 Filed 9–4–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Continental Beverage and Nutrition, Inc.; Order of Suspension of Trading

September 3, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Continental Beverage and Nutrition, Inc. (''Continental'') because it has not filed any periodic reports since it filed a Form 10–QSB for the period ended November 30, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Continental.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Continental is suspended for the period from 9:30 a.m. EDT on September 3, 2008, through 11:59 p.m. EDT on September 16, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20707 Filed 9–3–08; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58436; File No. SR–DTC–2008–11]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Implement a New Service to Allow Issuers To Track and Limit the Number of Beneficial Owners for an Individual CUSIP

August 27, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 6, 2008, The Depository Trust Company (''DTC'') 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 primarily by DTC. 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 purpose of the rule change is to implement a new service that will allow issuers, either themselves or through an issuer-designated administrator, to track and limit the number of beneficial owners for an individual CUSIP. This service would be called the Security Holder Tracking Service (''SH Tracking Service'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Background

A group of investment banks requested that DTC assist them in providing greater liquidity and access to capital for securities of closely held

[1] 15 U.S.C. 78s(b)(1).

issuers that are traded in private equities markets.[2] Specifically, this group asked DTC to build a system that would allow these closely held securities to be eligible for DTC's depository services while allowing the issuer, typically through an agent, to monitor and control the number and character (*e.g.*, qualified institutional buyers or ''QIBs'') of beneficial owners of its securities.[3] Currently, the processing and settlement of transactions of such issues is accomplished in a physical environment outside DTC.[4]

2. Proposed Rule Change

DTC proposes to implement its new SH Tracking Service that would facilitate the book-entry settlement and asset servicing for securities that are privately transacted. This service would allow issuers to track and limit the number of beneficial owners of its securities (''Tracked Securities'').

The eligibility process for a Tracked Security to be made and remain DTC-eligible would not change from DTC's current process. However, under the new proposed system, DTC would be requested in writing to set up a specific CUSIP for tracking such securities[5] and would be notified who will perform the function of the issuer's administrator for the CUSIP in the SH Tracking Service.[6] Upon receipt of all of such documentation, DTC would make the CUSIP DTC-eligible and would activate the tracking indicator on its security master file. Additionally, once it is made eligible, DTC would perform asset servicing for the issue.

The issuer's administrator would control movements of the particular CUSIP for which it had been appointed. Once the tracking indicator has been activated on the master file and the Administrator has been appointed, no transfer of the securities would take place in the Tracked Security without the approval of the administrator through DTC's Inventory Management System (''IMS''). The administrator, based on requirements of the issuer, would be solely responsible for determining whether a transaction should be effected in DTC. Once approved by the administrator, DTC would perform centralized book-entry settlement. IMS would only allow an administrator access to view and approve transactions for CUSIPs for which it had been appointed administrator as reflected in DTC's records.

Because DTC would be relying solely on the instructions of the administrator in order to effect settlement in Tracked Securities and would have no knowledge of the number or character of the underlying beneficial owners, use of the SH Tracking Service by any party would constitute an agreement that DTC shall not be liable for any loss or damages related to the use of the SH Tracking System. Each user of the SH Tracking Service would agree to indemnify and hold harmless DTC and its affiliates from and against any and all losses, damages, liabilities, costs, judgments, charges, and expenses arising out of or relating to the use of the SH Tracking Service.

The Tracked Securities would not be held as part of a Participant's general free account and would not be considered eligible collateral in DTC's settlement system.

Although the SH Tracking Service was developed to address the specific concerns of Rule144A securities, in practice DTC envisions that it could be utilized for other types of securities for which the number or character of the beneficial owners requires some level of control.

3. Fees

In an effort to recover the costs of building the SH Tracking Service, DTC proposes the following fees to be added to its Fee Schedule:

- $25,000 per CUSIP for SH Tracking Services.
- $5 per delivery and receive for Tracked Securities.
- $5 per receive and delivery for reclaims of Tracked Securities.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[7] and the rules and regulations thereunder as it allows for more efficient processing of transactions that are currently being effected outside of DTC by physical processing. Therefore, it will not adversely affect the safeguarding of funds or securities in DTC's custody and control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–DTC–2008–11 on the subject line.

Paper Comments

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

[2] Among the securities at issue are those that are commonly referred to as ''Rule 144A securities.'' These securities are transacted pursuant to the terms of Rule 144A (17 CFR 230.144A), which provides a safe harbor from the registration requirements of Section 5 of the Securities Act of 1933. 15 U.S.C. 77e.

[3] Issuers must control the number of beneficial owners pursuant to certain regulatory registration and reporting requirements. In order for issuers to be able to avoid the periodic reporting requirements imposed by the Act they must not have more than 500 beneficial owners. 15 U.S.C. 78l(g), 15 U.S.C. 78m(a), 15 U.S.C. 78o(d).

[4] DTC already allows Rule 144A securities that are not investment grade rated debt to be eligible for deposit, book-entry delivery, and other depository services only if the Rule 144A securities are designated for inclusion in a system of a self-regulatory organization approved by the Commission for the reporting of quotation and trade information of Rule 144A transactions (''SRO system''). Securities Exchange Act Release No. 33327 (Dec. 13, 1993); 58 FR 67878 (Dec. 22, 1993).

[5] DTC anticipates that this instruction will come from the underwriter at the time of the initial distribution at DTC.

[6] DTC anticipates that the issuer's transfer agent will serve as its administrator.

[7] 15 U.S.C. 78q–1.

All submissions should refer to File No. SR–DTC–2008–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. to 3 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at *http://www.dtcc.com/legal/rule_filings/dtc/2008.php*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–DTC–2008–11 and should be submitted on or before September 26, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20612 Filed 9–4–08; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58444; File No. SR–NYSEArca–2008–96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Establish NYSE Arca Realtime Reference Prices Service

August 29, 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 28, 2008, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a pilot test NYSE Arca Realtime Reference Prices service. This new NYSE Arca-only market data service allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange (''NYSE Arca Realtime Reference Prices'') and to establish a flat monthly fee for that service. There is no new rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

i. *The Service*. The Exchange proposes to conduct a pilot program that will allow the Exchange to test the viability of NYSE Arca Realtime Reference Prices. The Exchange intends for the NYSE Arca Realtime Reference Prices service to accomplish three goals:

1. To provide a low-cost service that will make real-time prices widely available to millions of casual investors;
2. To provide vendors with a real-time substitute for delayed prices; and
3. To relieve vendors of administrative burdens.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

This pilot program is similar to pilot programs that the Nasdaq Stock Market, Inc. (''Nasdaq'')[3] and the New York Stock Exchange LLC (''NYSE'')[4] recently established.

During the pilot program, the NYSE Arca Realtime Reference Prices service would allow Internet service providers, traditional market data vendors, and others (''NYSE Arca-Only Vendors'') to make available NYSE Arca Realtime Reference Prices on a real-time basis.[5] The NYSE Arca Realtime Reference Price information would include last sale prices for all securities that trade on the Exchange. It would include only prices. It would not include the size of each trade and would not include bid/asked quotations.

The product responds to the requirements for distribution of real-time last sale prices over the Internet for reference purposes, rather than as a basis for making trading decisions. The Exchange contemplates that Internet service providers with a substantial customer base and traditional vendors with large numbers of less active investors are potential subscribers to NYSE Arca Realtime Reference Prices.

During the pilot period, the Exchange will not permit NYSE Arca-Only Vendors to provide NYSE Arca Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE Arca-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as Rule 603(c)(1) of Regulation NMS requires.

The service eliminates some of the administrative burdens associated with the current distribution of real-time CTA prices. It features a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements. It will make NYSE Arca Realtime Reference Prices widely available and without charge to an unlimited number of casual investors.

ii. *The Fees*. For the duration of the pilot program, the Exchange proposes to establish a monthly flat fee that will entitle an NYSE Arca-Only Vendor to receive access to the NYSE Arca

[3] *See* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (File No. SR–NASDAQ–2006–060); and 57973 (June 16, 2008), 73 FR 35430 (June 23, 2008) (File No. SR–NASDAQ–2008–050).

[4] *See* Securities Exchange Act Release No. 57966 (June 16, 2008), 73 FR 35182 (June 20, 2008) (File No. SR–NYSE–2007–04).

[5] The Exchange notes that it will make the NYSE Arca Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

Realtime Reference Prices datafeed. The NYSE Arca-Only Vendor may use that access to provide unlimited NYSE Arca Realtime Reference Prices to an unlimited number of the NYSE Arca-Only Vendor's subscribers and customers. The Exchange is not proposing to impose any device or end-user fee for the NYSE Arca-Only Vendors' distribution of NYSE Arca Realtime Reference Prices.

The Exchange proposes to set the flat fee at $30,000 per month. The NYSE Arca-Only Vendor would agree to identify the NYSE Arca trade price by placing the text ''NYSE Arca Data'' in close proximity to the display of each NYSE Arca Realtime Reference Price or series of NYSE Arca Realtime Reference Prices, or by complying with such other identification requirement as to which NYSE may agree.

The NYSE Arca-Only Vendor may make NYSE Arca Realtime Reference Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

The flat fee enables Internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution.

In setting the level of the NYSE Arca Realtime Reference Prices pilot program fees, the Exchange took into consideration several factors, including:

(1) The fees that Nasdaq and NYSE are charging for similar services during their pilot periods;

(2) Consultation with some of the entities that the Exchange anticipates will be the most likely to take advantage of the proposed service;

(3) The contribution of market data revenues that the Exchange believes is appropriate for entities that provide market data to large numbers of investors, which are the entities most likely to take advantage of the proposed service;

(4) The contribution that revenues accruing from the proposed fees will make to meeting the overall costs of the Exchange's operations;

(5) Projected losses to the Exchange's other sources of market data revenues (e.g., from its share of revenues derived from Network A nonprofessional subscriber fees) as a result of the NYSE Arca Realtime Reference Prices service competing with those services;

(6) The savings in administrative and reporting costs that the NYSE Arca Realtime Reference Prices service will provide to NYSE Arca-Only Vendors; and

(7) The fact that the proposed fees provide an alternative to existing Network A fees under the CTA Plan, an alternative that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

In short, the Exchange believes that the proposed NYSE Arca Realtime Reference Prices pilot program fees would reflect an equitable allocation of its overall costs to users of its facilities.

iii. *Contracts*. As with the Nasdaq and NYSE pilot programs, NYSE Arca proposes to allow NYSE Arca-Only Vendors to provide NYSE Arca Realtime Reference Prices without requiring the end-users to enter into contracts for the benefit of the Exchange.

Instead, the Exchange will require NYSE Arca-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data. The notice would be similar to the notice that vendors provide today when providing CTA delayed data services.

The Exchange will require NYSE Arca-Only Vendors to enter into the form of ''vendor'' agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the Network A Vendor Form). The Network A Vendor Form will authorize the NYSE Arca-Only Vendor to provide the NYSE Arca Realtime Reference Prices service to its subscribers and customers.

The Network A Participants drafted the Network A Vendor Form as a one-size-fits-all form to capture most categories of market data dissemination. It is sufficiently generic to accommodate NYSE Arca Realtime Reference Prices. The Commission has approved the Network A Vendor Form.[6]

The Exchange will supplement the Network A Vendor Form with an *Exhibit C* that will provide above-described terms and conditions that are unique to the NYSE Arca Realtime Reference Prices service. The proposed *Exhibit C* is substantially similar to the Exhibit C that NYSE uses for its counterpart service and is attached to this proposed rule change as *Exhibit 5*. The supplemental *Exhibit C* terms and conditions would govern:

- The restriction against providing the service in the context of a trading or order-routing service;
- The replacement of end-user agreements with a hyperlink to a notice;
- The substance of the notice;
- The NYSE Arca Data labeling requirement;
- The fact that the vendor's authorization to provide the service will terminate at the expiration date of the pilot program unless the Exchange submits a proposed rule change to extend the program or to make it permanent and the Commission approves that proposed rule change; and
- Because of the experimental nature of the program, the requirements that the vendor (a) share with the Exchange any research it may conduct regarding the pilot program or the results of its experience with the program and (b) consult with the Exchange regarding its views of NYSE Arca Realtime Reference Prices.

iv. *Duration of Pilot Program*. The Exchange proposes to commence the pilot program upon the Commission's grant of accelerated effectiveness.

Both the Nasdaq and NYSE pilot programs are currently scheduled to end on November 1, 2008. NYSE Arca proposes to establish that same date as the end date for its pilot program. Prior to the end of the pilot period, the Exchange will assess its experience with the product. It either will submit a proposed rule change that seeks to extend or modify the pilot program or to make it permanent, or will announce publicly that it does not seek to extend the pilot program beyond the program's termination date.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change would benefit investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Arca Realtime Reference Prices service. In addition, the Exchange believes that the proposed fee would allow entities that provide market data to large numbers of investors, which are the entities most likely to take advantage of the proposed service, to make an appropriate contribution towards meeting the overall costs of the Exchange's operations.

[6] *See* Securities Exchange Act Release Nos. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990) (File No. 4–281); and 49185 (February 4, 2004), 69 FR 6704 (February 11, 2004) (SR–CTA/CQ–2003–01).

The Exchange notes that its proposed fee compares favorably with the fees that Nasdaq and NYSE are charging for similar services during their pilot periods. Because the proposed fee is substantially lower than those of Nasdaq and NYSE, it offers any vendor that wishes to provide its customers with a single market's data (as opposed to a more expensive consolidated data service) a less expensive alternative to Nasdaq and NYSE. In addition, for that lower fee, vendors receive Exchange prices for securities of Networks A, B and C, something that differentiates the Exchange's product from the NYSE product.

B. Self-Regulatory Organization's Statement on Burden on Competition

The pilot program proposes to provide an alternative to existing fees and does not alter or rescind any existing fees. In addition, it amounts to a competitive response to the products that Nasdaq and NYSE have commenced to make available. For those reasons, the Exchange does not believe that this proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has discussed this proposed rule change with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Arca Realtime Reference Prices service by becoming NYSE Arca-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and this proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–96 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2008–96. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–96 and should be submitted on or before September 26, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to be implemented on a pilot basis, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, it is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[10] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[11] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[12]

The Commission notes that the flat monthly fee of $30,000 for the new market data product, NYSE Arca Realtime Reference Prices, would be imposed on a pilot basis until October 31, 2008. On June 4, 2008, the Commission approved for public comment a draft approval order that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products that would encompass the NYSE Arca Realtime Reference Prices.[13] The Commission believes that NYSE Arca's proposal is consistent with the Act for the reasons noted preliminarily in the Draft Approval Order. In addition, the Commission notes that it recently approved similar NYSE and Nasdaq proposals to provide last sale prices to market data vendors for a fee on a pilot basis until October 31, 2008.[14] Pending

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 17 CFR 242.603(a).

[12] NYSE Arca is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

[13] *See* Securities Exchange Act Release No. 57917 (June 4, 2008), 73 FR 32751 (June 10, 2008) (Notice of Proposed Order Approving Proposal by NYSE Arca, Inc. to Establish Fees for Certain Market Data and Request for Comment) (''Draft Approval Order'').

[14] *See supra* notes 3 and 4.

review by the Commission of comments received on the Draft Approval Order, and final Commission action thereon, the Commission believes that approving NYSE Arca's proposal on a pilot basis would be beneficial to investors and in the public interest, in that it should result in broad public dissemination of additional real-time pricing information. Therefore, the Commission is approving NYSE Arca's proposed fees for a pilot period until October 31, 2008. The broader approach ultimately taken by the Commission with respect to non-core market data fees will necessarily guide Commission action regarding fees for the NYSE Arca Realtime Reference Prices beyond the pilot period.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal should benefit investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Arca Realtime Reference Prices. In addition, the Commission notes that the proposal is approved for a pilot period to expire on October 31, 2008, while the Commission analyzes comments on the Draft Approval Order. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[15] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2008–96) is hereby approved on an accelerated basis until October 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20613 Filed 9–4–08; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6341]

Culturally Significant Objects Imported for Exhibition Determinations: ''Benjamin West and the Venetian Secret''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Benjamin West and the Venetian Secret,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Yale Center for British Art, New Haven, CT, from on or about September 18, 2008, until on or about January 4, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 29, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–20629 Filed 9–4–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6344]

Culturally Significant Objects Imported for Exhibition Determinations: ''Chagall and the Artists of the Russian Jewish Theater, 1919–1949''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Chagall and the Artists of the Russian Jewish Theater, 1919–1949, imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Jewish Museum, New York, New York, from on or about November 9, 2008, until on or about March 22, 2009; and at The Contemporary Jewish Museum, San Francisco, California, from on or about April 19, 2009, until on or about September 7, 2009; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 26, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–20652 Filed 9–4–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6343]

Culturally Significant Objects Imported for Exhibition Determinations: ''Four Indian Kings (From the Portrait Gallery of Canada)''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Four Indian Kings (from the Portrait Gallery of Canada),'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or

custodian. I also determine that the exhibition or display of the exhibit objects at the Smithsonian Institution, Donald W. Reynolds Center for American Art and Portraiture, National Portrait Gallery, Washington, DC, from on or about September 12, 2008, until on or about January 25, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 29, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–20654 Filed 9–4–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6340]

Culturally Significant Objects Imported for Exhibition Determinations: ''Garden & Cosmos: The Royal Paintings of Jodhpur''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Garden & Cosmos: The Royal Paintings of Jodhpur,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC, from on or about October 11, 2008, until on or about January 4, 2009; at the Seattle Art Museum, Seattle, WA, from on or about January 29, 2009, to on or about April 26, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 22, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–20630 Filed 9–4–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6342]

Culturally Significant Objects Imported for Exhibition Determinations: ''S'abadeb—The Gifts: Pacific Coast Salish Art and Artists''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''S'abadeb—The Gifts: Pacific Coast Salish Art and Artists,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Seattle Art Museum, Seattle, WA, from on or about October 23, 2008, until on or about January 11, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 28, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–20655 Filed 9–4–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6295]

Shipping Coordinating Committee; Notice of Subcommittee Meeting

The Shipping Coordinating Committee (SHC), through its Subcommittee on Dangerous Goods, Solid Cargos and Containers, will conduct an open meeting at 10 a.m. on Wednesday, September 17, 2008, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593. The primary purpose of the meeting is to prepare for the 13th Session of the International Maritime Organization (IMO) Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC) to be held at the IMO Headquarters in London, England from September 22–26, 2008. Matters to be considered include:

—Amendments to the International Maritime Dangerous Goods (IMDG) Code and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods.
—Amendments to the Code of Safe Practice for Solid Bulk Cargoes (BC Code) including evaluation of properties of solid bulk cargos.
—Amendments to the Code of Safe Practice for Cargo Stowage and Securing (CSS Code).
—Casualty and incident reports and analysis.
—Extension of the Code of Practice for the Safe Unloading and Loading of Bulk Carriers (BLU Code) to include grain.
—Guidance on providing safe working conditions for securing of containers.
—Review of the Recommendations on the Safe Use of Pesticides in Ships.
—Guidance on protective clothing.
—Revision of the Code of Safe Practice for Ships Carrying Timber Deck Cargoes.
—Form and procedure for approval of the Cargo Securing Manual.
—Stowage of water-reactive materials.

—Amendments to the International Convention for Safe Containers.
—Review of the Guidelines for Packing of Cargo Transport Units.
—Review of documentation requirements for dangerous goods in packaged form.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. R.C. Bornhorst, U.S. Coast Guard (CG–5223), Room 1210, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 372–1426.

Dated: August 21, 2008.

Mark Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E8–20631 Filed 9–4–08; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 6309]

Shipping Coordinating Committee; Notice of Subcommittee Meeting

The Shipping Coordinating Committee (SHC), through its Subcommittee for the Prevention of Marine Pollution, will conduct an open meeting beginning at 9:30 a.m. on Thursday, September 25th, 2008, in Room 4202 (Proceres room) of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593. The primary purpose of the meeting is to prepare for the 58th Session of the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC 58) to be held at IMO Headquarters in London, England from October 6th to 10th, 2008. The primary matters to be considered include:

—Harmful aquatic organisms in ballast water;
—Recycling of ships;
—Prevention of air pollution from ships;
—Consideration and adoption of amendments to mandatory instruments;
—Interpretation and amendments of MARPOL 73/78 and related instruments;
—Implementation of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) Convention and the OPRC-Hazardous Noxious Substance (OPRC–HNS) Protocol and relevant conference resolutions;
—Identification and protection of Special Areas and Particularly Sensitive Sea Areas;
—Inadequacy of reception facilities;
—Reports of sub-committees;
—Work of other bodies;
—Status of Conventions;
—Harmful anti-fouling systems for ships;
—Promotion of implementation and enforcement of MARPOL 73/78 and related instruments;
—Technical Cooperation program;
—Role of the human element issues;
—Formal Safety Assessment;
—Development of a guidance document for minimizing the risk of ship strikes with cetaceans;
—Work program of the Committee and subsidiary bodies;
—Application of the Committees' Guidelines; and
—Election of the chairman and vice-chairman for 2009.

Please note that hard copies of documents associated with MEPC 58 will not be provided at this meeting. To request documents in electronic format (via e-mail or CD–ROM), please write to the address provided below, or request documents via the following Internet link: *http://www.uscg.mil/hq/g-m/mso/IMOMEPC.htm*.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Lieutenant Commander Brian Moore, Commandant (CG–5224), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1601, Washington, DC 20593–0001 or by calling (202) 372–1434.

Dated: August 25, 2008.

Mark Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E8–20656 Filed 9–4–08; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee (ARAC); Notice of Reestablishment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Aviation Rulemaking Advisory Committee (ARAC); Notice of reestablishment.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with section 102–3.65, title 41 of the Code of Federal Regulations, the FAA gives notice it is re-establishing the Aviation Rulemaking Advisory Committee (ARAC) for a 2-year period. The Committee's primary purpose is to provide the public with an earlier opportunity to participate in the FAA's rulemaking process. It will continue to operate in accordance with the rules of the Federal Advisory Committee Act and the Department of Transportation, FAA Committee Management Order (1110.30C). This notice replaces the notice published on April 4, 2008 (73 FR 18602).

For further information about the ARAC, please contact Ms. Gerri Robinson, FAA Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–9678.

Issued in Washington, DC, on September 3, 2008.

Pamela A. Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. E8–20745 Filed 9–3–08; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Seattle Tacoma International Airport, Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Seattle Tacoma International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before October 6, 2008.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, 1601 Lind Ave., SW., Renton, Washington 98057–3356. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark Reis, Airport Director, Port of Seattle, P.O. Box 68727, Seattle, Washington 98409–7322.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Johnson, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Ave., SW., Suite 250, Renton, Washington 98057–3356. The request to release property may be reviewed in

person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Seattle Tacoma International Airport, under the provisions of the AIR 21.

The Port of Seattle requests the release of 3 acres of airport property to the Highline School District. The property is located adjacent to Des Moines Way and 8th Ave. and is not needed for airport purposes.

Any person may inspect the request in person at the FAA office listed above under: **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the Port of Seattle, Acquisition and Relocation Office, 19639 28th Ave. S. Bldg. E, SeaTac, Washington 98118–16715.

Issued in Renton, Washington on August 20, 2008.

Paul Johnson,

Compliance Specialist, Seattle Airports District Office.

[FR Doc. E8–20462 Filed 9–4–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Federal Aviation Administration Report on Rules and Policies for Repairs, Alterations and Fabrication of Parts

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on the proposed report on the adequacy of the FAA's current and pending regulations, policy, guidance materials, and past practices used by non-Type Certificate (TC) holders in the development of replacement parts, alterations, and repairs.

DATES: Submit comments on the draft report by October 6, 2008.

ADDRESSES: Send all comments to: John Milewski, Certification Procedures Branch, AIR–110, 800 Independence Ave., SW., Washington, DC 20591, telephone (202) 267–3411; fax (202) 267–5340. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC, 20591, ATTN: Mr. John Milewski, or electronically submit comments to the following Internet address e-mail *9-AWA-AVS-RAF-ReportComments@faa.gov.* Include in the subject line of your message the title of the document on which you are commenting.

FOR FURTHER INFORMATION CONTACT: To obtain additional details on this report, please contact Mr. Mark C. Fulmer, ANE–100, Federal Aviation Administration, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7775, FAX: (781) 238–7199, or e-mail: *mark.c.fulmer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Submit written data, views, or arguments on the proposed Report to the above-specified address. You may examine all comments received before and after the comment closing date by visiting Room 815, FAA Building, 800 Independence Avenue, SW., Washington, DC, weekdays except Federal holidays, between 8 a.m. and 4 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing the final report.

Background

The Office of Aviation Safety in the Federal Aviation Administration chartered a team to assess the adequacy of current and pending regulations, policy, guidance and past practices for non-Type Certificate (TC) holders to obtain approval for developing replacement parts, alterations, and repairs. This Repair Alteration Fabrication (RAF) team reviewed all current regulations, policy and practices pertaining to the approval of replacement parts, repairs and alterations of critical engine parts. The team further reviewed concerns raised by TC holders and others, including the evaluation of other approval methods used by repair stations and owner/operator maintenance facilities. The team met with industry groups and companies to obtain additional information to assist them. The results of their efforts are a number of conclusions and recommendations they believe will improve the FAA's approval processes and foster the consistent application of safety standards for replacement parts, repairs, and alterations. This study is entitled ''Aviation Safety (AVS) Repair, Alterations and Fabrication (RAF) Study.''

How To Obtain Copies

You may get a copy of the proposed policy from the Internet at:*http://www.faa.gov/aircraft/draft_docs/*, then select publications to access the report. You may also request a copy from Mr. Mark C. Fulmer. See the section entitled ''**FOR FURTHER INFORMATION CONTACT**'' for the complete address.

Issued in Washington, DC, on August 27, 2008.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. E8–20460 Filed 9–4–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–25290]

Commercial Driver's License (CDL) Standards; Isuzu Motors America, Inc. (Isuzu); Exemption Renewal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew Isuzu's exemption from the Agency's requirement that drivers of commercial motor vehicles (CMVs) possess a commercial driver's license (CDL) issued in the United States. Isuzu requested that its current exemption for 11 Japanese engineers and technicians be renewed to enable them to continue test driving CMVs in the U.S. FMCSA requested comment on the renewal of the exemption, but received no comments.

DATES: This exemption is effective from July 2, 2008 through July 2, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, Jr., FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202–366–4325, or e-mail: *MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315, as referenced in section 31136(e), FMCSA may grant an exemption 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.'' Exemptions may be granted for up to 2 years from the approval date and may be renewed upon application (49 U.S.C. 31315(b)(1)). FMCSA has evaluated Isuzu's application for renewal on its merits and has granted renewal of the exemption for 11 of Isuzu's engineers and technicians for a 2-year period,

effective July 2, 2008 as previously announced in the **Federal Register** (73 FR 38023, July 2, 2008).

Comments

The FMCSA received no response to its request for public comments published in the **Federal Register** on July 2, 2008 (73 FR 38023).

Terms and Conditions for the Exemption

Based upon its evaluation of the application for an exemption, FMCSA granted Isuzu a renewal of the exemption from the Federal CDL requirement in 49 CFR 383.23 for eleven drivers (Shiro Fukuda, Wataru Kumakura, Takehito Yaguchi, Tsutomu Yamazaki, Toshiya Asari, Shintaro Moroi, Masaru Otsu, Satoru Amemiya, Tsuyoshi Koyama, Nobuyuki Miyazaki, and Hiroyoshi Takahashi) to test-drive CMVs within the U.S., subject to the following terms and conditions: (1) That these drivers are subject to drug and alcohol testing regulations, including testing, as provided in 49 CFR part 382, (2) that these drivers are subject to the same driver disqualification rules under 49 CFR parts 383 and 391 that apply to other CMV drivers in the U.S., (3) that these drivers keep a copy of the exemption in the vehicle they are driving at all times, (4) that Isuzu notify FMCSA in writing of any accident, as defined in 49 CFR 390.5, involving one of the exempted drivers, and (5) that Isuzu notify FMCSA in writing if any driver is convicted of a disqualifying offense described in section 383.51 or 391.15 of the FMCSRs.

The exemption will be revoked if: (1) The drivers for Isuzu fail 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. 31315 and 31136.

Issued on August 29, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–20668 Filed 9–5–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25756]

Commercial Driver's License Standards: Application for Exemption; Volvo Trucks North America (Volvo)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Volvo Trucks North America (Volvo) has applied for an exemption from the Federal requirement for a driver of commercial motor vehicles (CMVs) to hold a commercial driver's license (CDL). Volvo requests that the exemption cover one Swedish field test engineer who will test-drive CMVs for Volvo within the United States. This Volvo employee holds a valid Swedish CDL. Volvo states the exemption is needed to support a Volvo field test to meet future clean air standards, to test-drive Volvo prototype vehicles to verify results in ''real world'' environments, and to deliver the vehicles if necessary in the United States. Volvo believes the knowledge and skills tests and training program that Swedish drivers undergo to obtain a Swedish CDL ensures the exemption would provide a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. requirements for a CDL.

DATES: Comments must be received on or before October 6, 2008.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2006–25756 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:* Docket Management Facility; U.S. Department of Transportation, Room W–12–140, 1200 New Jersey Avenue, SE., 20590–0001.
- *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 on the exemption process, see the Public Participation heading 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 19477–78) 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 us to notify you that we received 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: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the conducting of any safety analyses. The Agency must also provide an opportunity for public comment on the application.

The Agency reviews the safety analyses and the public comments, and

determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Volvo has applied for an exemption from the commercial driver's license (CDL) rules, specifically 49 CFR 383.23 that prescribes licensing requirements for drivers operating commercial motor vehicles (CMVs) in interstate or intrastate commerce. Volvo requests the exemption because this driver-employee is a citizen and resident of Sweden, and therefore cannot apply for a CDL in any of the United States. A copy of the application is in Docket No. FMCSA–2006–25756.

The exemption would allow one driver to operate CMVs in interstate commerce as part of a team of drivers who will support a Volvo field test to meet future air quality standards, to test-drive Volvo prototype vehicles at its test site and in the vicinity around Phoenix, Arizona, to verify results in ''real world'' environments, and to deliver the vehicles if necessary in the U.S. The driver is Fredrik Eriksson, and Volvo requests that the exemption cover a 2-year period beginning February 2009.

This driver holds a valid Swedish CDL, and as explained by Volvo in previous exemption requests, drivers applying for a Swedish-issued CDL must dergo a training program and pass knowledge and skills tests. Volvo also stated in prior exemption requests that the knowledge and skills tests and training program that Swedish drivers undergo to obtain a Swedish CDL ensure the exemption provides a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. requirement for a CDL.

FMCSA has previously determined the process for obtaining a Swedish-issued CDL is comparable to, or as effective as the Federal requirements of Part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. On other prior occasions FMCSA has published notices concerning similar Volvo requests. The initial notice of a similar nature was published by FMCSA on May 12, 2006, granting this exemption to Volvo for 11 Swedish CDL drivers permitting them to operate CMVs in the U.S. (71 FR 27780).

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Volvo's application for an exemption from the CDL requirements of 49 CFR 383.23. The Agency will consider all comments received by close of business on October 6, 2008. Comments will be available for examination in the docket at the location listed under the ''**ADDRESSES**'' section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: August 29, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–20667 Filed 9–5–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Availability and Solicitation of Applications for the Program for Capital Grants for Rail Line Relocation and Improvement Projects

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funding availability; solicitation for applications.

SUMMARY: Under this Notice, the FRA encourages eligible applicants to submit applications for grants to fund rail line relocation and improvement projects. This Notice of Funds Availability does not apply to the nine (9) projects specifically enumerated in the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008 (Division K of Pub. L. 110–161 (December 26, 2007)).

DATES: FRA will begin accepting grant applications on September 15, 2008. Applications may be submitted until the earlier of Friday, November 28, 2008, or the date on which all available funds will have been committed under this program. The last-mentioned date will be announced in the **Federal Register**.

ADDRESSES: Applications must be submitted electronically to *http://www.grants.gov* (''Grants.Gov''). Grants.Gov allows organizations electronically to find and apply for competitive grant opportunities from all Federal grant-making agencies. Any eligible applicant wishing to submit an application pursuant to this notice should immediately initiate the process of registering with Grants.Gov at *http://www.grants.gov*. Please confirm all Grants.Gov submissions by e-mailing *paxrail@dot.gov*.

For application materials that an applicant is unable to submit via Grants.Gov (such as oversized engineering drawings), applicants may submit an original and two (2) copies to the Federal Railroad Administration at the following address: Federal Railroad Administration, Attention: John Winkle, Office of Railroad Development (RDV–13), Mail Stop #20, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are encouraged to use other means to ensure timely receipt of materials.

FOR FURTHER INFORMATION CONTACT: John Winkle, Office of Railroad Development (RDV–11), Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Phone:* (202) 493–6067; *Fax:* (202) 493–6330, or Robert Carpenter, Grants Officer, Office of Acquisition and Grants Services (RAD–30), Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Phone:* (202) 493–6153; *Fax:* (202) 493–6171.

SUPPLEMENTARY INFORMATION: Section 9002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005) amended chapter 201 of title 49 of the United States Code by adding § 20154 which authorized, but did not appropriate, $350,000,000 per year for each of the fiscal years (FY) 2006 through 2009 for the purpose of funding the Program for Capital Grants for Rail Line Relocation and Improvement Projects (the Program) (Catalog of Federal Domestic Assistance (CFDA) Program Number 20.314). SAFETEA–LU also directed FRA to promulgate a regulation that establishes the Program. That Final Rule was published on July 11, 2008 and can be found at 73 FR 39875 (49 CFR part 262).

In FY 2008, Congress, through the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008 (Division K of Pub. L. 110–161 (December 26, 2007)) appropriated $20,145,000 to FRA to fund the Program. Of that amount, Congress directed that $5,240,000 be

spent on nine specific projects. This amount was reduced by rescission to $5,135,000 leaving $20,040,200 to be spent on the Program, $14,905,000 of which is to be awarded through discretionary (competitive) grants. This Notice of Funding Availability and Solicitation of Applications applies to the $14,905,000 in discretionary grants. FRA intends to directly contact the sponsors (or potential sponsors) of the nine projects specifically identified by Congress in the Appropriations Act and identify for them the application requirements that will apply to the congressionally designated projects, which will also be required to be submitted through Grants.Gov.

An approved applicant, or other non-Federal party, shall pay at least 10 per cent of the costs of any project funded by a grant awarded through the Program. FRA expects to award grants to multiple eligible participants. FRA anticipates that no further public notice will be made with respect to selecting grantees under this program.

Purpose: In many places throughout the country, rail infrastructure that was once critical to communities now presents problems as well as benefits. While rail offers significant benefits over other modes of transportation (e.g., rail is more fuel efficient that trucking), changes in land use and development over the last century have created some challenges. For example, tracks that run down the middle of towns and were once vital for economic survival now separate the communities on either side. Rail yards and tracks occupy valuable real estate. Trains parked in sidings may present attractive nuisances to children and vandals, and, in the case of tank cars containing hazardous materials, may create serious security risks. Grade crossings may present safety risks to the vehicles and pedestrians that must cross the tracks. These same crossings create inconveniences when long trains block crossings for extended periods of time and sound horns as they operate through crossings in neighborhoods. In some cases, trains operate over lines at speeds that are suited for the class of track, but often these speeds concern the surrounding community. In an increasing number of locations, rail lines have become so congested that communities experience almost continuous train traffic that often leads to lengthy backups at grade crossings. In short, rail lines that once brought economic prosperity and social cohesion are now sometimes viewed as factors in the decline of both.

As a result, State and local governments are looking for ways to eliminate the problems created by the presence of railroad infrastructure while retaining the transportation advantages of this mode. Many times, potential solutions include relocating track to an area that is better suited for it or raising or lowering track so that it is not at-grade. In addition to these track relocation projects, many communities are eager to improve existing rail infrastructure in an effort to mitigate the perceived negative effects of rail traffic on safety in general, motor vehicle traffic flow, economic development, or the overall quality of life on a community in general.

To assist State and local governments in this effort, Congress in SAFETEA–LU authorized the Program for Capital Grants for Rail Line Relocation and Improvement Projects. In FY 2008, Congress appropriated $20,145,000, reduced by rescission to $20,040,200, for the Program, $14,905,000 of which is available for discretionary (competitive) grants. No funds were appropriated in FY 2006 or FY 2007.

Authority: The authority for the Program can be found in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005), and at 49 CFR part 262.

Funding: The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008, provides $14,905,000 for discretionary grants, which allows FRA to award one or more grants covering up to 90 percent of the cost of rail line relocations and improvements. The funding provided under these grants will be made available to grantees on a reimbursement basis. It is anticipated that the available funding could support projects proposed by multiple applicants. FRA may choose to award a grant or grants within the available funds in any amount. Applicants should indicate whether funding made available through grants provided under this Program, together with committed funding from other sources, including the required match, will be sufficient to complete the overall project or a discrete portion of the project.

Schedule for Capital Grant Program: FRA will begin accepting grant applications on September 15, 2008. Applications must be submitted by November 28, 2008 or the date (to be announced) on which all available funds will have been committed. Due to the limited funding available under this program: (1) applicants are encouraged to submit their applications at the earliest date practicable in order to maximize the consideration of their application in the competition; and (2) FRA may request that an applicant submit a revised application reflecting a refined scope of work and budget. FRA anticipates making the first award(s) pursuant to this notice by the second quarter of FY 2009.

Eligible Participants: Only States, political subdivisions of States, and the District of Columbia are eligible for grants under the Program (*see* 49 CFR §§ 262.3 and 262.7).

Eligible Projects: Construction projects undertaken for the improvement of the route or structure of a rail line that either: (1) Is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development; or (2) involve a lateral or vertical relocation of any portion of the rail line (*see* 49 CFR 262.7) are eligible. Pre-construction activities, such as preliminary engineering and design work and environmental compliance, are considered part of the overall construction project (*see* 49 CFR 262.3(6)). Only new projects will be eligible; projects for which construction has commenced prior to the date of the application will not be considered. In addition, only costs incurred from the date of the application will be considered as allowable for both reimbursement and matching purposes. For pre-application costs associated with environmental and historic preservation compliance, see 49 CFR § 262.15.

Selection Criteria: FRA will consider the following selection factors in evaluating applications for grants under this program (*see* 49 CFR § 262.9):

1. The capability of the applicant to fund the project without Federal grant funding;

2. The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce;

3. The effects of the rail line, relocated as proposed, on the freight rail and passenger rail operations on the line;

4. Equitable treatment of the various regions of the United States;

5. Any other factors FRA determines to be relevant in assessing the effectiveness and/or efficiency of the grant application, including the cost-effectiveness of the proposed project in terms of benefits achieved in relation to the funds expended. In the preamble to the Final Rule, FRA provided an extensive, but not exhaustive, list of possible data items that could be used to support a cost-effectiveness determination. That list can be found at 73 FR 39880.

Requirements for Grant Applications: The following points describe the minimum content which will be required in grant applications. These requirements may be satisfied through a narrative statement submitted by the applicant, supported by spreadsheet documents, tables, drawings, and other materials, as appropriate. Each grant application will:

1. Designate a point of contact for the applicant and provide his or her name and contact information, including phone number, mailing address and e-mail address. The point of contact must be an employee of an eligible applicant (i.e., a state employee, or an employee of a political subdivision of a state, or an employee of the District of Columbia).

2. Include a detailed project description, including an explanation of why the project is an eligible project and a thorough discussion of how the project meets all of the selection criteria.

3. Include a complete Standard Form 424, ''Application for Federal Assistance,'' Standard Form 424D, ''Assurances—Construction Programs,'' and the most recent audit performed in compliance with OMB Circular A–133. Information on Circular A–133 can be found at *http://www.whitehouse.gov/omb/circulars/a133/a133.html*. Also include signed copies of FRA's Additional Assurances and Certifications, available at *http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf*.

4. Define the scope of work for the proposed project, including the anticipated project schedule. Describe the proposed project's physical location (as applicable), and include any drawings, plans, or schematics that have been prepared relating to the proposed project.

If the funding from the Program is only going to be a portion of the overall funding for the project, describe the complete project and specify which portion will involve Federal funding. In addition, FRA strongly encourages applicants to preliminarily determine the feasibility of the project, as well as to estimate complete project costs before submitting an application. Applications should include these feasibility determinations and cost estimates, if completed. FRA will consider favorably applications that include these types of studies as they demonstrate that an applicant has a definite understanding of the scope and cost of the project.

In submitting applications, applicants should be mindful that the Program as created by Congress and as further described in the Final Rule is focused on constructing projects (see 49 CFR 262.3 and 262.7). If FRA approves a project for funding, allowable costs (i.e., costs that can qualify for reimbursement from Federal funds or as part of the required non-Federal match) will have to directly support project construction. Section 262.3 identifies the types of activities that are associated with ''construction'' and thus potentially allowable. In terms of project development, FRA will consider as potentially allowable costs associated with the preparation of architectural and engineering plans, project cost estimates, and related project-specific construction-related costs (including costs associated with securing environmental clearance as described in § 262.15 of the Final Rule). FRA will not consider costs associated with planning studies and similar analyses as allowable. For approved projects, construction related expenditures may qualify as allowable even if they are incurred in advance of the execution of the grant agreement between the applicant and FRA so long as such costs are incurred after the date of the application (except for pre-application costs associated with compliance with environmental and historic preservation statutes and regulations, see 49 CFR 262.15) and otherwise satisfy eligibility standards; an applicant will bear all risk for such costs in the event no award is made.

5. Present a detailed budget for the proposed project. At a minimum, the budget should separate total cost of the project into the following categories, if applicable: (1) Administrative and legal expenses; (2) Land, structures, rights-of-way, and appraisals; (3) Relocation expenses and payments; (4) Architectural and engineering fees; (5) Project inspection fees; (6) Site work; (7) Demolition and removal; (8) Construction labor, supervision, and management; (9) Materials, by type (e.g., ties, rail, signals, switches); (10) Miscellaneous; and (11) Contingencies.

6. Describe the source and amount of matching funds, including any in-kind contributions.

7. Describe proposed project implementation and project management arrangements. Include descriptions of expected arrangements for project contracting, contract oversight, change-order management, risk management, and conformance to Federal requirements for project progress reporting.

8. Describe the anticipated public and private benefits associated with the proposed project and the applicant's assessment of how those benefits outweigh the costs of the proposed project (*see* 49 CFR 262.11(b)). Identify any financial contributions or commitments the applicant has secured from private entities that are expected to benefit from the project.

Although FRA will weigh all of the selection criteria, potential applicants should be aware that FRA is seeking the maximum public benefit from these limited funds and that, in directing FRA to establish the Program, Congress instructed FRA to consider the feasibility of seeking financial contributions or commitments from private entities involved with the project in proportion to the expected benefits that would accrue to those entities. As FRA explained in the preamble to the Final Rule, however, FRA will apply all the selection criteria and will not disfavor one application over another because of the amount requested.

9. Describe anticipated environmental or historic preservation impacts associated with the proposed project, any environmental or historic preservation analyses that have been prepared, and progress toward completing any environmental documentation or clearance required for the proposed project under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), section 4(f) of the DOT Act, the Clean Water Act, or other applicable Federal or State laws. Refer to 49 CFR 262.15 for further guidance. Applicants are advised to consult with the FRA's Office of Railroad Development before initiating any NEPA, NHPA or Section 4(f) environmental or historic preservation reviews. Contact information is included under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Format: Excluding spreadsheets, drawings, and tables, the narrative statement for grant applications may not exceed thirty pages in length. With the exclusion of oversized engineering drawings (which may be submitted in hard copy to the FRA at the address above), all application materials should be submitted as attachments through Grants.Gov. Spreadsheets consisting of budget or financial information should be submitted via Grants.Gov as Microsoft Excel (or compatible) documents.

Issued in Washington, DC, on August 29, 2008.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. E8–20669 Filed 9–4–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub-No. 56X)]

Soo Line Railroad Company d/b/a Canadian Pacific Railway Company-Abandonment Exemption-in Bottineau, Rolette, and Towner Counties, ND

Soo Line Railroad Company d/b/a Canadian Pacific Railway Company (CPR) has filed a verified notice of exemption under 49 CFR 1152 Subpart F–*Exempt Abandonments* to abandon an approximately 61-mile line of railroad between milepost 535 +/− (in Kramer) and milepost 474.5 +/− (in Bisbee), in Bottineau, Rolette, and Towner Counties, ND. The line traverses United States Postal Service Zip Codes 58748, 58384, 58366, 58353, and 58317.

CPR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic can and has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[1]

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 7, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 15, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 25, 2008, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CPR's representative: W. Karl Hansen, Leonard, Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CPR has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 12, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CPR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CPR's filing of a notice of consummation by September 5, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov*."

Decided: August 27, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–20530 Filed 9–4–08; 8:45 am]

BILLING CODE 4915–01–P

[1] CPR has filed a correction to its notice of exemption to correct pages 8 and 13, to reflect the correct Board docket number.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] 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).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individuals and Entities Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of eight newly-designated individuals and entities whose property and interests in property are blocked pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers."

DATES: The designation by the Director of OFAC of the eight individuals and entities identified in this notice pursuant to Executive Order 12978 is effective on August 28, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued Executive Order 12978 (60 Fed. Reg. 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or

hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia, or to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On August 28, 2008, the Director of OFAC, in consultation with the Attorney General and Secretary of State, as well as the Secretary of Homeland Security, designated eight individuals and entities whose property and interests in property are blocked pursuant to the Order.

The list of additional designees is as follows:

1. ALMACEN Y COMPRAVENTA LOS 3 OROS, Carrera 7 No. 11–60, Cartago, Valle, Colombia; NIT # 16219873–3 (Colombia) [SDNT].

2. GANADERIA ARIZONA, Carrera 43A No. 1 Sur-188 of. 903, Medellin, Colombia; Hacienda Arizona, Caucasia, Antioquia, Colombia; NIT # 10026001–7 (Colombia) [SDNT].

3. GRANJA PORCICOLA LA FORTALEZA, Carrera 22 No. 8–71, Cartago, Valle, Colombia; Vda. La Hondura, Cartago, Valle, Colombia; NIT # 31423447–7 (Colombia) [SDNT].

4. MOTEL MOMENTOS E.U., Carrera 22 No. 8–71, Cartago, Valle, Colombia; NIT # 900089381–9 (Colombia) [SDNT].

5. RESTREPO ENCIZO, Luz Piedad, c/o GRANJA PORCICOLA LA FORTALEZA, Cartago, Valle, Colombia; c/o MOTEL MOMENTOS E.U., Cartago, Valle, Colombia; Calle 17 Bis. 2N–74, Cartago, Valle, Colombia; DOB 27 Dec 1975; POB Sevilla, Valle, Colombia; Cedula No. 31423447 (Colombia); Passport AH411251 (Colombia) (individual) [SDNT].

6. SANCHEZ JIMENEZ, Jesus Maria Alejandro (a.k.a. ''CHUCHO''; a.k.a. ''EL PRIMO''; a.k.a. ''SCUBI''; a.k.a. ''SCUBY''), c/o GANADERIA ARIZONA, Medellin, Colombia; Calle 11 No. 23–80, Pereira, Colombia; Hacienda Arizona, Caucasia, Antioquia, Colombia; DOB 06 Nov 1975; POB Pereira, Colombia; Cedula No. 10026001 (Colombia); Passport AF400955 (Colombia) (individual) [SDNT].

7. SANCHEZ RUA, Rafael Angel, c/o ALMACEN Y COMPRAVENTA LOS 3 OROS, Cartago, Valle, Colombia; c/o GRANJA PORCICOLA LA FORTALEZA, Cartago, Valle, Colombia; c/o MOTEL MOMENTOS E.U., Cartago, Valle, Colombia; Calle 17 Bis. No. 2N–74, Cartago, Valle, Colombia; Finca El Encanto, Anserma, Colombia; Finca La Fortaleza, Anserma, Colombia; Finca La Perlita, Anserma, Colombia; Finca La Quichita, Anserma, Colombia; Finca Quiebra de Italia, Anserma, Colombia; DOB 22 Aug 1966; POB Ansermanuevo, Valle, Colombia; Cedula No. 16219873 (Colombia); Passport AF866705 (Colombia) (individual) [SDNT].

8. VIEDMA ABONCE, Marisol, c/o ALMACEN Y COMPRAVENTA LOS 3 OROS, Cartago, Valle, Colombia; c/o MOTEL MOMENTOS E.U., Cartago, Valle, Colombia; Calle 10B No. 14A–90 Manz. C Casa 14, Cartago, Valle, Colombia; DOB 30 Mar 1970; Cedula No. 31415437 (Colombia) (individual) [SDNT].

Dated: August 28, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–20573 Filed 9–4–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Narcotics Traffickers Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 21 individuals and entities whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Narcotics Traffickers of 21 individuals and entities identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on August 28, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation Office of Foreign Assets Control Department of the Treasury Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued Executive Order 12978 (60 Fed. Reg. 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia, or to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On August 28, 2008, the Director of OFAC removed from the list of Specially Designated Narcotics Traffickers 21 individuals and entities listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the unblocked individuals and entities follows:

1. ARIAS ESPINOSA ARIES S.A. (a.k.a. ARIES S.A.), Calle 22D No. 34–55, Bogota, Colombia; NIT # 830012619–1 (Colombia) [SDNT].

2. ARIAS JARAMILLO, Diego De Jesus, c/o ARIAS ESPINOSA ARIES S.A., Bogota, Colombia; c/o EXCIPIENTES FARMACEUTICOS EXCIPHARMA S.A., Bogota, Colombia; c/o INVERSIONES ASE LTDA., Bogota, Colombia; Calle 7 Oeste No. 2–207, Cali, Colombia; Carrera 2A No. 7–30 203,

Cali, Colombia; Carrera 18 No. 137–43, Bogota, Colombia; Carrera 41 No. 125A–52 Int. 5 ap. 402, Bogota, Colombia; Cedula No. 19241807 (Colombia) (individual) [SDNT].

3. ECHEVERRY TRUJILLO, Martha Lucia, c/o REVISTA DEL AMERICA LTDA., Cali, Colombia; c/o CORPORACION DEPORTIVA AMERICA, Cali, Colombia; c/o M.O.C. ECHEVERRY HERMANOS LTDA., Cali, Colombia; c/o M C M Y CIA. LTDA., Cali, Colombia; DOB 8 Sep 1956; Cedula No. 31151067 (Colombia) (individual) [SDNT].

4. ESPINOSA DE ARIAS, Gladys, c/o ARIAS ESPINOSA ARIES S.A., Bogota, Colombia; c/o EXCIPIENTES FARMACEUTICOS EXCIPHARMA S.A., Bogota, Colombia; c/o INVERSIONES ASE LTDA., Bogota, Colombia; Cedula No. 41683460 (Colombia) (individual) [SDNT].

5. EXCIPIENTES FARMACEUTICOS EXCIPHARMA S.A. (a.k.a. EXCIPHARMA S.A.), Calle 22D No. 34–55, Bogota, Colombia; NIT # 830107839–4 (Colombia) [SDNT].

6. GOMEZ BELTRAN, Jorge, c/o LABORATORIOS GENERICOS VETERINARIOS, Bogota, Colombia; DOB 5 Jan 1950; Cedula No. 19091811 (Colombia) (individual) [SDNT].

7. GUTIERRES CERDAS, Alvaro (a.k.a. GUTIERREZ CERDAS, Alvaro), c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; DOB 9 May 1942; alt. DOB 24 Jun 1950; Cedula No. 14966562 (Colombia) (individual) [SDNT].

8. GUTIERREZ BURAGLIA, German, c/o PENTACOOP LTDA., Bogota, Colombia; DOB 3 Sept 1960; Cedula No. 19439177 (Colombia) (individual) [SDNT].

9. GUTIERREZ LOZANO, Ana Maria, c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o SERVICIOS SOCIALES LTDA., Barranquilla, Colombia; c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o INVERSIONES GEELE LTDA., Bogota, Colombia; c/o INVERSIONES KANTON LTDA., Cucuta, Norte de Santander, Colombia; DOB 22 Apr 1970; Cedula No. 39783954 (Colombia); Passport 39783954 (Colombia) (individual) [SDNT].

10. GUTIERREZ MANCIPE, Hernando, c/o CODISA, Bogota, Colombia; c/o COMERCIALIZADORA DE PRODUCTOS FARMACEUTICOS LTDA., Ibague, Colombia; c/o MACROFARMA S.A., Pereira, Colombia; c/o MATERIAS PRIMAS Y SUMINISTROS S.A., Bogota, Colombia; c/o TECNOVET LTDA., Bogota, Colombia; Cedula No. 2898335 (Colombia); Passport 2898335 (Colombia) (individual) [SDNT].

11. GUTIERREZ PADILLA, Clara Ines, c/o ADMACOOP, Bogota, Colombia; c/o DECAFARMA S.A., Bogota, Colombia; c/o FARMACOOP, Bogota, Colombia; c/o CREDISOL, Bogota, Colombia; c/o INVERSIONES DOBLE CERO E.U., Bogota, Colombia; c/o INVERSIONES NUEVO DIA E.U., Bogota, Colombia; c/o INVERSIONES SAMPLA E.U., Bogota, Colombia; DOB 16 Feb 1961; Cedula No. 51583831 (Colombia); Passport 51583831 (Colombia) (individual) [SDNT].

12. GUTIERREZ PARDO, Elvira Patricia, c/o ADMACOOP, Bogota, Colombia; c/o BONOMERCAD S.A., Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; c/o COMEDICAMENTOS S.A., Bogota, Colombia; Cedula No. 39612308 (Colombia) (individual) [SDNT].

13. GUTIERREZ PEREZ, Eliana Patricia, c/o ADMACOOP, Bogota, Colombia; c/o CODISA, Bogota, Colombia; DOB 12 Jan 1954; Cedula No. 41631893 (Colombia); Passport 41631893 (Colombia) (individual) [SDNT].

14. INVERSIONESASE LTDA., Calle 22D No. 34–55, Bogota, Colombia; NIT # 800245987–8 (Colombia) [SDNT].

15. LOZANO CANCINO DE GUTIERREZ, Maria Gladys (a.k.a. LOZANO DE GUTIERREZ, Gladys), c/o SERVICIOS SOCIALES LTDA., Bogota, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogota, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o INVERSIONES GEELE LTDA., Bogota, Colombia; DOB 19 Oct 48; Cedula No. 41444092 (Colombia); Passport AF673253 (Colombia) (individual) [SDNT].

16. LOZANO DE GOMEZ, Zilia Helena, c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogota, Colombia; DOB 18 Oct 1951; Cedula No. 41577886 (Colombia) (individual) [SDNT].

17. OROZCO NINO, Adriana, c/o COLIMEX LTDA., Cali, Colombia; c/o PROSALUD Y BIENESTAR S.A., Cali, Colombia; c/o ALERO S.A., Cali, Colombia; DOB 1 Nov 1966; Cedula No. 31972596 (Colombia); N.I.E. X2302530–T (Spain); Passport 31972596 (Colombia) (individual) [SDNT].

18. RAMIREZ LIBREROS, Gladys Miriam (a.k.a. RAMIREZ LIBREROS, Gladys Myriam), c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o INVERSIONES MOMPAX LTDA., Cali, Colombia; c/o SERVICIOS MYRAL E.U., Cali, Colombia; DOB 20 Nov 45; Cedula No. 38974109 (Colombia); Passport 38974109 (Colombia) (individual) [SDNT].

19. RODRIGUEZ MORENO, Juan Pablo, c/o INVERSIONES RODRIGUEZ MORENO, Cali, Colombia; Carrera 65 647, Cali, Colombia; DOB 30 Jul 1980 (individual) [SDNT].

20. RODRIGUEZ MORENO, Miguel Andres, Carrera 66 No. 6–47, Cali, Colombia; Carrera 65 No. 6–47, Cali, Colombia; c/o INVERSIONES RODRIGUEZ MORENO, Cali, Colombia; c/o ASISTENCIA PROFESIONAL ESPECIALIZADA EN COLOMBIA LIMITADA, Cali, Colombia; DOB 14 Jul 1977; Cedula No. 94328841 (Colombia); Passport AD253939 (Colombia) (individual) [SDNT].

21. SUAREZ GARCIA, Dora Angela, c/o G M C GRUPO MAQUILACION COLOMBIANO, Bogota, Colombia; c/o LABORATORIOS PROFARMA LTDA., Bogota, Colombia; Cedula No. 41322501 (Colombia); Passport 41322501 (Colombia) (individual) [SDNT].

Dated: August 28, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–20557 Filed 9–4–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Loans in Areas Having Special Flood Hazards

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before October 6, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Loans in Areas Having Special Flood Hazards.

OMB Number: 1550–0088.

Form Number: N/A.

Description: The borrower uses the notice to make decisions regarding the collateral to be used to secure a loan. This notice advises the borrower as to whether the property securing the loan is or will be located in a special flood hazard area, whether flood insurance on the property securing the loan is required, and includes a description of the flood insurance purchase requirements. This notice also provides the borrower with information regarding the availability of Federal assistance in the event of a declared Federal flood disaster. If a loan is being serviced by a loan servicer, this notice also is provided by the savings association to the loan servicer to assist in making the servicer aware of its responsibility for performing certain tasks on behalf of the lender (e.g., collecting insurance premiums). The statute and OTS implementing regulations require the lending institution to retain a record of the receipt of the notice to the borrower. OTS uses this record to verify compliance.

A second notice to the borrower is required if the lending institution determines at any time during the life of a loan that adequate (required) flood insurance is not in place. This notice is used by the borrower to determine how much flood insurance to purchase.

The notice to the Federal Emergency Management Agency (FEMA) advises FEMA of the identity of the initial loan servicer and, if necessary, of changes in servicers. FEMA uses this notice to maintain current information regarding the persons to whom it should direct inquiries regarding flood insurance, or to send notices of flood insurance policy renewals.

A lending institution is required by statute and OTS implementing regulations to use the standard flood hazard determination form developed by FEMA when determining whether the property securing the loan is or will be located in a special flood hazard area.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 832.

Estimated Number of Responses: 214,660.

Estimated Burden Hours per Response: 15 minutes.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 54,497 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: August 29, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–20565 Filed 9–4–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of VA Property for the Development and Operation of a Transitional Housing Facility for Eligible Homeless Veterans at the Department of Veterans Affairs Medical Center, Battle Creek, MI.

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to enter into an enhanced-use lease of 6 acres of underutilized land at the VA Medical Center in Battle Creek, Michigan. The selected lessee will finance, design, develop, construct, operate, manage and maintain a transitional housing facility consisting of 75 units and a manager's unit. As consideration for the lease, the lessee will be required to provide VA with rent, and/or in-kind consideration, including furnishing homeless veterans with transitional housing units and related services on a priority basis.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: August 29, 2008.

James B. Peake,

Secretary of Veterans Affairs.

[FR Doc. E8–20576 Filed 9–4–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
September 5, 2008

Part II

Postal Regulatory Commission

39 CFR Parts 3001, 3030, and 3031
Administrative Practice and Procedure, Postal Service; Proposed Rule

POSTAL REGULATORY COMMISSION

39 CFR Parts 3001, 3030, and 3031

[Docket No. RM2008–3; Order No. 101]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing new rules to address two types of administrative filings authorized under a new postal law: complaints and rate and service inquiries. It is also proposing to delete existing complaint rules, as they are overtaken by the proposal. Issuance of this document reflects the Commission's ongoing implementation of new and revised statutory provisions.

DATES: Initial comments are due October 6, 2008. Reply comments are due October 27, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

This rulemaking is part of the series of rulemakings initiated by the Postal Regulatory Commission (Commission) to fulfill its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law No. 109–435, 120 Stat. 3218 (2006). The proposed rules seek to implement 39 U.S.C. 3662 setting forth procedures governing the disposition of complaints filed with the Commission. The proposed rules replace existing regulations and are designed to enable the Commission to hear and resolve complaints in a streamlined and efficient manner while providing appropriate due process for all participants.

The Commission's current complaint procedures are found in 39 CFR 3001.81 *et seq*. The proposed rules would locate the revised, enhanced complaint regulations in part 3030 and delete those located in subpart E of part 3001. The proposed regulations would also add a new part 3031 to set up procedures for dealing with rate or service inquiries.

Below, the Commission discusses the proposed rules with respect to the complaint process. Part II presents a more thorough discussion and detailed outline of the main issues raised in this docket by the Commission's proposed rules. Part III provides a section-by-section analysis of each proposed new rule. The proposed rules are set forth at the end of this Notice. Comments by interested persons are due October 6, 2008. Reply comments are due by October 27, 2008.

These proposed rules represent the Commission's initial effort to establish a basic functional framework for addressing complaints and other written communications received by the Commission under its enhanced responsibilities due to the passage of the PAEA. These regulations are designed to serve as a reasonable starting point. The Commission expects that these rules will evolve as the Commission grows more familiar with the types of issues that it may be asked to consider. If the Commission subsequently is made aware that the complaint or rate or service inquiry rules are not adequate, the Commission will promptly begin proceedings to enhance these rules.

II. Discussion of the Proposed Rules

The PAEA imposes a new regulatory structure on the Postal Service which, among other things, elevates the role that complaints play in providing interested persons a forum for addressing issues arising under specified sections in title 39. The Commission's complaint authority stems from amended section 3662, which provides, in relevant part, as follows:

> Any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

39 U.S.C. 3662(a).

To implement amended section 3662, the Commission proposes to revise its existing complaint procedures and add procedures to deal with rate or service inquiries that are not filed as complaints. These proposed rules are designed to fulfill the intent of Congress as expressed in the text of the PAEA.

The PAEA changed the Commission's role and its relationship with the Postal Service. Due to this new role, the Commission's complaint authority was significantly expanded by the PAEA.

Under the former Postal Reorganization Act of 1970 (PRA), if the Commission found a complaint to be justified, its remedial authority consisted of issuing a public report or a recommended decision to the Governors of the Postal Service. *See* former 39 U.S.C. 3662 (2000), *superseded by* Pub. L. 109–435. The Commission's complaint authority under the PRA was much more limited and the Commission's rules reflected that limited role. This limited complaint authority reflected the Commission's greater role under the PRA in the rate setting process and the fact that rates were set in an open, public proceeding. In that process, if the public felt that the Postal Service was not complying appropriately with the policies of the PRA, the public could bring those concerns to the Commission during the rate setting proceeding and the Commission could move to balance these and other public policies in recommending domestic rates.

Under the PAEA, the Postal Service has much greater independence and flexibility in managing and setting its rates subject to a limited number of requirements. Subject to these limits, the Postal Service now has broad flexibility to balance policies related to rates and services. The PAEA implemented Congress' goal of allowing the Postal Service to operate more like a business in setting its rates and offering services in order to allow it to more effectively compete with its private sector competitors.

At the same time, the PAEA changed and expanded the Commission's complaint authority. The Commission is authorized to order the Postal Service to come into compliance with the statute and remedy the effects of any non-compliance, *see* 39 U.S.C. 3662(c), order fines for deliberate non-compliance, section 3662(d), and have the district courts of the United States enforce these administrative orders, section 3664. The PAEA also altered the scope of the Commission's complaint jurisdiction. *See* section 3662 (citing 39 U.S.C. 101(d), 401(2), 403(c), 601, and chapter 36).

This enhancement of the Commission's complaint authority reflects Congress' intent for complaints to become one of the major tools to achieve the PAEA goal of increased accountability and transparency of the Postal Service to the public it serves. *See* 39 U.S.C. 3622(b)(6) (''increase the transparency of the ratemaking process''); 39 U.S.C. 3691 (transparency of service standards); 39 U.S.C. 3622(b)(3) (''maintain high quality service standards''); 39 U.S.C. 504(g)(3)(A) (''public interest in maintaining the financial transparency of a government establishment * * *''). However, even though Congress

expanded the number of issues that the Commission could consider in a complaint proceeding, the Commission's complaint jurisdiction was not intended to be without limit. *See* U.S.C. 3662(a).

The proposed rules distinguish between the nature of complaints that may be filed with the Commission. They recognize that the Commission's primary role is to foster public postal policy as set forth in the PAEA by focusing on issues and decisions with substantial ramifications.

To carry out this intent of Congress, the Commission believes that it is appropriate to focus more of its limited resources on important issues that raise rate and service issues with broad implications or unfair competition issues, and less of its resources on issues that can more easily be remedied by postal management on a local level.

Toward these ends, the Commission proposes a two-tiered approach to deal efficiently and expeditiously with written communications directed to the Commission regarding the Postal Service. As proposed, these communications fall into one of two categories: (1) Complaints, and (2) rate or service inquiries. The proposed rules treat written communications that satisfy the form and manner requirements discussed below as ''complaints'' filed under section 3662. Written communications that do not meet the form and manner requirements would be treated as rate or service inquiries provided they include some minimal identifying information. The differences and reasons for this proposed differentiation between the categories of written communications received by the Commission as well as the proposed methods of dealing with such communications are discussed below.

These rules are intended to reflect Congressional intent that the complaint process be available for hearing such broad policy matters which, under the PRA, would have been handled in the context of a comprehensive proceeding. Additionally, these proposed rules are intended to provide for some residual remedy for mailers in the potential situation where the Postal Service does not adequately deal with mailers' individual concerns.

A. Complaints

Form and manner requirements. The Commission's new proposed complaint procedures are designed largely to deal with problems, needs, or concerns of more than only a limited number of persons or those dealing with claims of unfair competition. The proposed rules categorize written communications as complaints under section 3662 if they satisfy certain ''form and manner'' requirements.[1] These requirements are designed to elicit all the information necessary for the Commission to be able to make an informed judgment about whether or not the complaint raises a material issue of fact or law under section 3662(b)(1)(A). The proposed rules, consistent with past practice, explicitly encourage settlement of disputes and add the option of alternative dispute resolution procedures.

In addition to specifying the statutory section or sections to which a complaint must apply, Congress only intended for the Commission to begin proceedings if a particular complaint raised a material issue of fact or law. *See* 39 U.S.C. 3662(b)(1)(A)(i).

Nature of complaints. 39 U.S.C. 3662 provides the basis for the Commission's authority to hear complaints. It provides that a complaint may be filed by any person who believes that the Postal Service is not acting in accordance with sections 101(d), 401(2), 403(c), 404(a), 601, and chapter 36 (or any regulations promulgated under these sections). It is helpful for this analysis (and to explain why the proposed rules were crafted in this fashion) to explore the commonalities of these statutory provisions. First, the Commission discusses the statutory provisions that may raise broad policy issues. Then, the Commission discusses those statutory sections that may raise issues relating to unfair competition.

In the Commission's new role created by the PAEA, chapter 36 controls the Postal Service's and Commission's authority over rates and services of market dominant products, competitive products, and experimental products. Chapter 36 expresses Congressional intent with respect to the national policies that the Postal Service and the Commission are to apply with respect to rate setting and providing services to the public.[2]

These rates and services are typically designed in a manner that affects a significant number of individuals, represents a pattern or practice, or impacts a substantial region of the nation. In certain circumstances, rates or services are designed to apply to individual mail users or limited numbers of mail users. In such situations, competitors may be harmed and be the most likely to seek redress.

Chapter 36 also prescribes specific reports that the Postal Service and the Commission are tasked with providing. These broad reports are designed to increase the accountability and the transparency of the Postal Service to the general public it serves.

Congress authorized complaints to be brought for violations of section 101(d) which requires the costs of postal operations to be apportioned on a fair and equitable basis. The distribution of postal operational costs through rates is, by its very nature, done on more than a localized basis. Related costs are pooled to determine national average costs for different categories of mail. Specific costs for an individual mailpiece are not typically considered under this section.

It is important to recognize that Congress chose not to include the other paragraphs of section 101 in providing interested persons with an avenue for bringing complaints. For example, Congress's decision not to include paragraphs 101(a) and (b) should be read as an indicator that Congress did not want the Commission to focus its limited resources on considering complaints of individuals alleging isolated violations of section 101. For example, section 101(a) requires the Postal Service to ''provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.'' Furthermore, section 101(b) provides that ''[n]o small post office shall be closed solely for operating at a deficit * * *.'' By excluding these provisions, Congress altered the Commission's complaint jurisdiction to controversies raising broad policy issues such as these cost apportionment concerns.

Section 401(2) deals with the Postal Service's authority to promulgate regulations. In allowing complaints to be brought for violations of this section, Congress authorized interested persons to petition for review of specific Postal Service rules and regulations claimed to be unlawful. This section concerns the adoption and amendment of the Postal Service's rules and regulations and the overall policy behind those regulations, not the application of a particular rule to an individual mail user. This provides further support that Congress intended the Commission's complaint authority typically be used to consider issues of broad applicability.

[1] The law provides the Commission with discretion to determine the form and procedures to use for dealing with the variety of complaints it may hear under 39 U.S.C. section 3662 (''Any interested person * * * may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.'').

[2] Under the PAEA, the Commission no longer recommends rates. The new statute provides the Postal Service with increased flexibility which is balanced by an increase in transparency and oversight by the Commission.

Section 601 permits the carriage of letters out of the mail under certain conditions. Thus, it may affect potential competitors' abilities to compete with the Postal Service for certain aspects of the Postal Service's business. In allowing complaints for violations of this section, Congress provided a check on the monopoly powers of the Postal Service and a means to address claims that it was using those powers to give itself an unfair competitive advantage in those areas where Congress believed that competition with the Postal Service is in the best interest of the nation. Accordingly, individualized complaints may be based upon this section as such complaints are rooted in claims of unfair competition.

Section 403(c) prohibits the Postal Service from establishing rates, classifications, and fees that either unduly discriminate against or grant an unreasonable preference to any mail users. By including section 403(c) within the statutory provisions that interested persons are allowed to file complaints under, section 3662 provides individuals with a forum for seeking relief against the Postal Service action alleged to be unduly discriminatory or preferential. This section reflects the bedrock regulatory principle of maintaining a level playing field among competing private entities as well as those entities that compete against the Postal Service for the non-monopoly aspects of its business. Accordingly, individualized complaints would lie under this section.

Section 404a limits the Postal Service power (1) to establish regulations which have the effect of harming competition; (2) to compel private entities to disclose information about their intellectual property; or (3) to use information obtained from a person without their consent and then offer any postal product that uses or is based on such information. These provisions effectively limit the Postal Service's authority to control certain aspects of the marketplace. In allowing complaints to be brought for violations of this section, Congress provides for an independent regulatory body to maintain fair competition and a level playing field among the Postal Service, its competitors, and its suppliers. Accordingly, individualized complaints may be based upon this section.

The proposed rules are designed to help the Commission identify those complaints that are more likely to raise material issues of fact or law as required by section 3662(b)(1)(A) related to the policy issues attendant to chapter 36 and the enumerated sections discussed above. They allow for efficient use of the Commission's limited resources on complaints that may raise material issues of fact or law.

At the same time, the Commission's rules are designed to encourage the expeditious resolution of complaints that may be less likely to raise broader material issues of fact or law under 3662(b)(1)(A) or raise broad issues of public postal policy. The proposed complaint rules are designed to strike an appropriate balance between ensuring that postal management receives increased flexibility while providing the accountability and transparency of the Postal Service as envisioned by the PAEA.

Most local issues related to problems associated with individual mailers do not raise postal public policy concerns. Instead, they raise issues which are typically isolated incidents or those affecting only a few mail users. These are typically best resolved by the Postal Service at the local level. To ensure that the Commission is effective and efficient, the Commission proposes to initially take a more informal approach toward dealing with these types of complaints. Such procedures provide the Postal Service with an opportunity to remedy the alleged wrongdoing prior to the Commission taking any action. This serves the PAEA goal of allowing postal management greater flexibility in dealing with its customers without unnecessary and potentially burdensome regulatory involvement.

The Commission, however, recognizes that some of these complaints may in fact raise public postal policy issues that are important to the postal system and have a greater potential to raise material issues of fact or law. Accordingly, if the Postal Service is unable to resolve such complaints on a more informal basis, the Commission will take appropriate action. If the complaint raises material issues of fact or law in accordance with 39 U.S.C. 3662(b)(1)(A) formal complaint procedures will be initiated.

The Commission's proposed rules are also designed to provide more formal treatment for issues raised by individual matters when those issues appear to represent a potential pattern or practice affecting a significant number of mail users. The Commission believes that such systemic patterns or practices have a significant likelihood of raising broad policy issues whereby more formal procedures may be appropriate.

B. Rate or Service Inquiries

The complaint procedures apply to written communications directed to the Commission that meet the form and manner requirements of the proposed complaint rules. The proposed rate or service inquiry procedures apply to written communications directed to the Commission that are not filed as complaints. The Postal Service typically is best suited to address these matters and should deal with such issues in the first instance in accordance with the PAEA goal of greater management responsibility and flexibility.

Nonetheless, the Commission believes that it should be informed concerning matters that may bear on future complaints or its other responsibilities under the PAEA. By helping facilitate public communication with the Postal Service, the Commission furthers the PAEA goal of increased accountability and transparency of the Postal Service.

The Commission believes also that its enhanced authority under the PAEA may encourage more individuals to seek the Commission's assistance in resolving their issues with the Postal Service. As a result, the proposed rules provide the mailing public with an avenue for bringing their concerns to appropriate Postal Service personnel.

Rate and service inquiry procedures also allow the Commission to ensure that issues raised and resolved under these rules remain isolated incidents. The rate or service inquiry process will help the Commission in deciding whether to address these matters in a more formal manner, which could potentially include the initiation of a complaint proceeding by a public representative or the appointment of an investigator to explore the matter. 39 U.S.C. 503 allows the Commission to promulgate these regulations to carry out its enhanced responsibilities under the PAEA.

C. Commission Investigator

The Commission's proposed rules allow it to appoint an investigator to explore issues raised in a complaint or rate or service inquiry filing. The Commission believes that the ability to appoint an investigator will allow it to deal more efficiently with complaints in certain situations, particularly where more information that cannot be easily obtained through more conventional means may be needed, or where the use of conventional means would bring undue delay. With the assistance of an investigator, the Commission may be able to resolve a complaint at an early stage of the proceeding, thereby saving the parties litigation costs, time, and resources.

39 U.S.C. 503 allows the Commission to promulgate regulations to carry out its obligations and functions under its new, PAEA-enhanced responsibilities. One of these enhanced responsibilities is the Commission's enforcement

authority to order the Postal Service to take remedial action. If the Commission finds a complaint to be justified and remedial action appropriate, the Commission might seek the assistance of an investigator to ensure that any proposed remedial action is tailored narrowly to address the violation without causing undue or unnecessary disruption.

The Commission does not envision the investigator playing a dominant role in any complaint proceedings. The parties remain advocates for their positions and the investigator will act as a neutral fact gatherer in order to develop the record. As a check and balance, the parties will always have the opportunity to review the investigator's public, written findings and make comments to the Commission prior to its decision.

D. Conclusion

As noted earlier, these complaint and rate or service inquiry rules are meant to provide structure, and allow the Commission to effectively and efficiently deal with concerns as they arise. At the current time, the Commission has confidence in the Postal Service's ability to manage and direct remediation of individual, localized mailer problems. If, over the course of time, the Commission determines through its data collection and monitoring of complaints and rate or service inquiries that the Postal Service is not dealing effectively with such individual, localized mailer issues, the Commission may determine that revised rules are necessary to allow it to play a more active role in the process.

III. Section-by-Section Analysis

In this part, the Commission reviews the proposed rules, describing what each rule seeks to accomplish. The purpose of this section-by-section analysis is to assist the commenters in determining the nature of each proposed regulation and the rationale behind it. Each proposed section is discussed below.

Section 3030.1 Applicability. This proposed rule identifies the types of complaints that the Commission will consider as specified by 39 U.S.C. 3662. It also identifies the other Commission rules that will apply to complaint proceedings including the filing requirements and the Commission's adjudication procedures. Paragraph (b) of this section makes the discovery rules inapplicable to complaint proceedings until the Commission initiates a proceeding on the complaint, *i.e.*, until the Commission finds that the complaint raises a material issue of fact or law. Without such a provision, the discovery process might be abused. This paragraph ensures that only complainants raising material issues of fact or law will subject the Postal Service to the time and expense of the discovery process.

Section 3030.2 Scope and nature of complaints. This proposed rule describes the nature of complaints that the Commission will consider. It expands upon the Commission's current ''Scope and nature of complaints'' rule, 39 CFR 3001.82, to conform with the statutory changes to 39 U.S.C. 3662.

Section 3030.10 Complaint contents. This proposed rule identifies the information that must be included in a complaint filing in order to satisfy the ''form and manner'' requirements. These requirements, which are based largely upon the Federal Energy Regulatory Commission's formal complaint rule, 18 CFR 385.206, are designed to provide specificity as to the legal and factual basis for the complaint. The intent is to apprise the Postal Service of the key elements of the complaint, and in concert with the Postal Service's answer, to enable the Commission to determine whether the complaint raises a material issue of fact or law.

The proposed rule requires the complainant to certify that it has attempted to meet or confer with the Postal Service. This criterion has two purposes. First, it is designed to allow the parties to explore whether alternative dispute resolution procedures might be effective in settling the issues raised by the complaint. Second, it requires an attempt to resolve the complaint before involving the Commission. This follows the Commission's long-standing policy favoring settlement. *See* 39 CFR 3001.85(b).

Section 3030.11 Service. This proposed rule requires the complainant to serve the complaint on the Postal Service at the same time the complaint is filed with the Commission. This rule ensures that the Postal Service receives a copy of the complaint at the time it is sent to the Commission instead of having to wait to be notified of the pending complaint.

Section 3030.12 Pleadings filed in response to a complaint. This proposed rule governs the timeline for the Postal Service to respond to complaints. The Postal Service has 20 days to respond to a formal complaint. If the Postal Service files an appropriate motion, the timeline for the Postal Service to file its answer to a complaint is altered as it would be under the Federal Rules of Civil Procedure.

Section 3030.13 Conditions for application of rate or service inquiry procedures. This proposed rule addresses the Commission's ability to apply the rate or service inquiry special procedures in order to attempt to resolve a complaint using the Postal Service's internal procedures.

This section does not allow the Commission to use the special rate or service inquiry procedures in connection with complaints that raise unfair competition issues or concern rate or service matters with broad implications. As discussed above, these topics raise important policy issues that Congress intended the Commission to consider in the first instance.

Section 3030.14 Answer contents. This proposed rule identifies the information to be included in an answer filed with the Commission. The requirements for the proposed rule are based largely upon the Federal Energy Regulatory Commission's answer rule, 18 CFR 385.213. The proposed rule is designed to elicit information necessary for the Commission to determine if the appropriate statutory and regulatory requirements have been met as well as to determine if the complaint raises a material issue of fact or law. The rule requires the Postal Service to certify that it has attempted to meet or confer with the complainant. This mirrors the provision in proposed rule 3030.10 designed to foster settlement.

Section 3030.20 Sufficiency of information. This proposed rule is designed to give the Commission flexibility to obtain additional information if it determines it would be better able to make an informed determination on whether a complaint raises a material issue of fact or law under 39 U.S.C. 3662(b)(1). This section allows additional information to be obtained by issuing a request or through the appointment of an investigator.

Section 3030.21 Investigator. This proposed rule allows the Commission to appoint an investigator to explore some or all of the issues raised in a complaint. This proposed rule also makes public the investigator's findings and report to ensure that the process remains open and transparent.

Section 3030.30 Beginning proceedings on complaints. This proposed rule explains the various procedural paths that a complaint will take when the Commission makes a finding under 39 U.S.C. 3662(b)(1)(A)(i) or (ii). Upon making a finding under these sections, the Commission will either (1) issue a notice that includes setting forth the next steps in the proceeding, or (2) issue a final order dismissing the complaint.

Section 3030.40 Policy on settlement. This proposed rule is a re-codification of 39 CFR 3001.85(b) as a separate rule. The Commission believes that its policy favoring settlement is important and should be in a separate rule to emphasize its importance and so that it can be found easily in the Code of Federal Regulations.

Section 3030.41 Satisfaction. This proposed rule sets forth the procedural requirements that a complainant must follow in the event that the complaint is resolved informally (in whole or in part). The rule is designed to ensure that parties are free to explore settlement at any stage of litigating a complaint. However, once a determination that a complaint raises a material issue of fact or law has been made, the Commission believes it is prudent to evaluate whether the issues raised by the complaint may continue to impact a significant segment of the mailing community prior to closing its docket.

Section 3030.50 Remedies. This proposed rule sets forth the potential statutory remedies for a complaint that the Commission finds to be justified. The Commission has three types of remedial authority. The Commission may issue an order designed to ensure that the Postal Service achieves compliance with the applicable requirements found to be violated through the complaint proceeding. The Commission also may issue an order to remedy the effects of non-compliance with applicable requirements or postal policy. Finally, in cases of deliberate non-compliance by the Postal Service, the Commission may fine the Postal Service for each incidence of deliberate non-compliance. The rule ensures that in those circumstances where the Commission is considering fining the Postal Service, participants will be afforded an opportunity to comment, including addressing any aggravating and mitigating factors related to the violation prior to the Commission making a determination that such extraordinary relief is warranted.

Section 3031.10 Rate or service inquiry contents. This proposed rule identifies the information that should be included in rate or service inquiries. The requirements for this proposed rule are based in part on the Federal Communications Commission's informal complaint rules, 47 CFR 1.716. The proposed rule is designed to elicit the information necessary for the Commission to determine how to deal efficiently with the inquiry so that the party's needs or concerns can be addressed appropriately.

Section 3031.11 Rate or service inquiry procedures. This proposed rule sets forth the special procedures that the Commission will take when it receives a rate or service inquiry. The Commission will send the inquiry to the Postal Service for appropriate action, and review reports submitted by the Postal Service in connection with rate or service inquiries filed under this part.

Section 3031.12 Treatment as a complaint. The purpose of part 3031 is to assist individuals in resolving rate or service matters through informal means. This proposed rule also provides for the appointment of an investigator or officer to represent the general public if the Commission believes that a systematic pattern may be at issue. Such action could ultimately result in the prosecution of a complaint proceeding under part 3030 if such pattern or practice affects a substantial number of persons or region of the nation in an important respect.

IV. Public Representative

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

It is Ordered:

1. Docket No. RM2008–3 is established for the purpose of receiving comments on the Commission's proposed rules under the Postal Accountability and Enhancement Act establishing procedures governing the disposition of complaints filed with the Commission.

2. The Commission proposes to amend its rules of practice and procedure as shown below. The proposed amendments involve removing subpart E of part 3001 and adding new parts 3030 and 3031.

3. Kenneth E. Richardson is designated as an officer of the Commission representing the interests of the general public in this docket.

4. Interested persons may submit comments by October 6, 2008.

5. Interested persons may submit reply comments by October 27, 2008.

6. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

List of Subjects in 39 CFR Parts 3030 and 3031

Administrative practice and procedure, Postal Service.

Issued: August 21, 2008.

By the Commission.

Judith M. Grady,

Acting Secretary.

For the reasons stated in the preamble, under the authority at 39 U.S.C. 3662, the Postal Regulatory Commission proposes to amend 39 CFR chapter III as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 3622; 3633; 3652; 3661.

Subpart E—[Removed]

2. Remove and reserve subpart E of part 3001, consisting of §§ 3001.81 through 3001.87.

3. Add part 3030 to read as follows:

PART 3030—RULES FOR COMPLAINTS

Subpart A—General

Sec.
3030.1 Applicability.
3030.2 Scope and nature of complaints.

Subpart B—Form and Manner Requirements of Initial Pleadings

3030.10 Complaint contents.
3030.11 Service.
3030.12 Pleadings filed in response to a complaint.
3030.13 Conditions for application of rate and service inquiry procedures.
3030.14 Answer contents.

Subpart C—Supplemental Information

3030.20 Sufficiency of information.
3030.21 Investigator.

Subpart D—Proceedings

3030.30 Beginning proceedings on complaints.

Subpart E—Settlement

3030.40 Policy on settlement.
3030.41 Satisfaction.

Subpart F—Commission Determinations and Relief

3030.50 Remedies.

Authority: 39 U.S.C. 503; 3662.

Subpart A—General

§ 3030.1 Applicability.

(a) The rules in this part govern the procedure for complaints filed under 39 U.S.C. 3662 that meet the form and manner requirements of subpart B of this part. Part 3001, subpart A of this chapter applies unless otherwise stated in this part or otherwise ordered by the Commission.

(b) Sections 3001.25 through 3001.27 of this chapter do not apply to this part unless and until the Commission makes a finding under § 3030.30(a)(1) that the complaint raises material issues of fact or law.

§ 3030.2 Scope and nature of complaints.

Any interested person (including a duly appointed officer of the Commission representing the interests of the general public) may file a written complaint with the Commission if that person believes that the Postal Service is not operating in conformance with:

(a) The provisions of 39 U.S.C. chapter 36, or 39 U.S.C. 101(d), 401(2), 403(c), 404a, or 601; or

(b) Any rule, order, or other regulatory requirement based on any of these statutory provisions.

Subpart B—Form and Manner Requirements of Initial Pleadings

§ 3030.10 Complaint contents.

(a) A complaint must:

(1) Set forth the facts and circumstances that give rise to the complaint;

(2) Clearly identify and explain how the Postal Service action or inaction violates applicable statutory standards or regulatory requirements including citations to the relied upon section or sections of title 39, order, regulation, or other regulatory requirements;

(3) Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to the complainant;

(4) Include a description of persons or classes of persons known or believed to be similarly affected by the issues involved in the complaint, if applicable;

(5) State the nature of the evidentiary support that the complainant has or expects to obtain during discovery to support the facts alleged in the complaint;

(6) Include an explanation as to why such facts could not reasonably be ascertained by the complainant where claims are premised on information and belief;

(7) State whether the issues presented are pending in or have been resolved by an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party; and if so, provide an explanation why timely resolution cannot be achieved in that forum;

(8) State the specific relief or remedy requested and the basis for that relief;

(9) Include a certification that states that prior to filing, the complainant attempted to meet or confer with the Postal Service to resolve or settle the complaint, why the complainant believes additional such steps or utilizing some form of alternative dispute resolution would be inadequate, and the reasons for that belief; and

(10) Include a certification that the complaint has been served on the United States Postal Service as required by § 3030.11.

(b) The Commission may waive any of the requirements listed in paragraph (a) of this section to serve the interests of justice.

§ 3030.11 Service.

Any person filing a complaint must simultaneously serve a copy of the complaint on the Postal Service at the following address: [Postal Service designated e-mail to be determined in final rule]. A complaint is not deemed filed until it is served on the Postal Service.

§ 3030.12 Pleadings filed in response to a complaint.

(a) Unless otherwise ordered by the Commission, the Postal Service shall file its answer to a complaint within 20 days after the complaint is filed.

(b) If appropriate, the Postal Service may file a dispositive motion or otherwise move to delay disposition of the complaint. If the Postal Service files such a motion, unless otherwise ordered by the Commission, the period of time for filing its answer is altered as follows:

(1) If the Commission denies the motion or postpones disposition, the answer is due within 10 days of the Commission's action; or

(2) If the Commission invokes the rate or service inquiry special procedures under § 3030.13 to the complaint, the answer is due contemporaneously with the Postal Service's report under § 3031.11 of this chapter if the complaint has not been resolved by that date.

(c) If the Postal Service answer is delayed by the filing of a motion under paragraph (b) of this section, it may not obtain a further delay by filing another motion under paragraph (b) of this section raising an issue or objection that was available to the Postal Service but omitted from its earlier motion.

§ 3030.13 Conditions for application of rate or service inquiry procedures.

(a) This section applies to complaints that concern rate or service matters that are isolated incidents affecting few mail users provided that the complaint does not either:

(1) Raise unfair competition issues;

(2) Raise issues affecting a significant number of mail users;

(3) Represent a pattern, practice, or systemic issue that affects a significant number of mail users (or is reasonably likely to be the beginning of such a pattern); or

(4) Impact a substantial region of the nation.

(b) The Commission may in its discretion, *sua sponte,* attempt to resolve a complaint through the rate or service inquiry procedures of § 3031.11 of this chapter if the Commission finds that there is a reasonable likelihood that such procedures may result in resolution of the complaint. The Commission will issue an order to apply the procedures of § 3031.11 of this chapter prior to the due date for the Postal Service answer set forth in § 3030.12.

(c) If the Commission determines that application of paragraph (a) of this section is appropriate and the Postal Service is unable to resolve the complaint within 45 days, or such other period of time as ordered by the Commission, the Postal Service shall file its answer in accordance with § 3030.12(b)(2).

§ 3030.14 Answer contents.

(a) An answer must:

(1) Contain a clear and concise statement of any disputed factual allegations upon which the answer relies;

(2) Contain a clear and concise statement of any legal interpretation upon which the answer relies;

(3) Admit or deny, specifically and with explanatory detail, each material factual allegation of the complaint. Denials based on information and belief must include an explanation as to why such facts could not reasonably be ascertained by the Postal Service prior to filing the answer;

(4) Set forth every defense relied upon. The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, including factual allegations and law upon which the Postal Service relies. Affirmative defenses shall be specifically captioned as such and presented separately from any denials;

(5) State the nature of the evidentiary support that the Postal Service has or expects to obtain to support its factual allegations and defenses; and

(6) Include a certification that states that prior to the filing, the Postal Service attempted to meet or confer with the complainant to resolve or settle the complaint, whether the Postal Service believes additional such steps or utilizing some form of alternative dispute resolution would be inappropriate and the reasons for that belief.

(b) The Commission may waive any of the requirements listed in paragraph (a) to serve the interests of justice.

Subpart C—Supplemental Information

§ 3030.20 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the

Commission determines that additional information is necessary to enable it to evaluate whether the complaint raises material issues of fact or law, the Commission may, in its discretion, require the complainant and/or the Postal Service to provide additional information as deemed necessary or issue an appropriate order to appoint an investigator in accordance with § 3030.21.

§ 3030.21 Investigator.

The Commission may appoint an investigator to examine issues raised by the complaint and responses thereto. The investigator will use appropriate due diligence under the circumstances and provide a public, written report to the Commission.

Subpart D—Proceedings

§ 3030.30 Beginning proceedings on complaints.

(a) Within 90 days after receiving a properly filed complaint under this part, the Commission will issue:

(1) A notice and order in accordance with § 3001.17 of this chapter that finds the complaint raises material issues of fact or law and begin proceedings on the complaint; or

(2) An order dismissing the complaint.

(b) Orders issued pursuant to paragraph (a) of this section shall include the Commission's written statement setting forth the bases of its determination.

(c) Contemporaneously with, or shortly after issuing a notice and order under paragraph (a)(1) of this section, the Commission will appoint a public representative to represent the interests of the general public in the complaint proceeding.

Subpart E—Settlement

§ 3030.40 Policy on settlement.

It shall be the general policy and practice of the Commission to encourage the resolution and settlement of complaints by informal procedures, such as correspondence, conferences between the parties, and the conduct of proceedings off the record with the consent of the parties.

§ 3030.41 Satisfaction.

(a) If a complaint is resolved informally, in whole or in part, subsequent to Commission action under § 3030.30(a)(1), the complainant must promptly file:

(1) A statement explaining the resolution; and

(2) A motion to dismiss or amend the complaint based on the resolution.

(b) The Commission may order the submission of additional information before acting on any motion filed under paragraph (a)(2) of this section.

Subpart F—Commission Determinations and Relief

§ 3030.50 Remedies.

(a) If the Commission finds that a complaint is justified, it will order that the Postal Service take such action as the Commission determines appropriate to:

(1) Achieve compliance with the applicable requirements; and

(2) Remedy the effects of any non-compliance.

(b) If the Commission finds deliberate non-compliance on the part of the Postal Service, the Commission may order, based on the nature, circumstances, extent, and seriousness of the non-compliance, a fine for each incidence of non-compliance.

(c) In any case where the Commission is considering the extraordinary relief described in paragraph (b) of this section, the Commission will provide notice to the participants that such relief is being considered. It will allow the participants a reasonable opportunity to comment and present aggravating and mitigating factors for its consideration.

4. Add part 3031 to read as follows:

PART 3031—RULES FOR RATE OR SERVICE INQUIRIES

Subpart A—Rate or Service Inquiry Forms and Procedures

Sec.

3031.10 Rate or service inquiry contents.
3031.11 Rate or service inquiry procedures.
3031.12 Treatment as a complaint.

Subpart B—[Reserved]

Authority: 39 U.S.C. 503; 3662.

Subpart A—Rate or Service Inquiry Forms and Procedures

§ 3031.10 Rate or service inquiry contents.

(a) A rate or service inquiry shall be in writing and should contain:

(1) The name, address, and telephone number of the inquiring party;

(2) Details regarding the Postal Service's action or inaction;

(3) A statement of facts supporting the inquiring party's allegations; and

(4) The specific relief being sought, if any.

(b) The Commission may waive any of the requirements listed in paragraph (a) of this section to serve the interests of justice.

§ 3031.11 Rate or service inquiry procedures.

(a) The Commission will forward rate or service inquiries to the Postal Service for investigation. The Postal Service will, within 45 days of receipt of such inquiry, advise the Commission in writing, with a copy to the inquiring party, of its resolution of the inquiry or its refusal or inability to do so.

(b) The Commission will monitor all rate or service inquiries to determine if Commission action under § 3031.12 is appropriate.

(c) Where there are clear indications from the Postal Service's report or from other communications between the parties that the inquiry has been resolved, the Commission may, in its discretion, consider such proceeding to be resolved, without response to the inquiring party.

§ 3031.12 Treatment as a complaint.

If the Commission receives a sufficient volume of rate or service inquiries on the same or similar issue such that there may be sufficient cause to warrant treatment as a complaint, it may appoint an investigator to review the matter under § 3030.21 of this chapter or appoint a public representative representing the interests of the general public to pursue the matter.

Subpart B—[Reserved]

[FR Doc. E8–20581 Filed 9–4–08; 8:45 am]
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Federal Register

Friday,
September 5, 2008

Part III

The President

Proclamation 8285—National Historically Black Colleges And Universities Week, 2008

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Presidential Documents

Title 3—

The President

Proclamation 8285 of September 3, 2008

National Historically Black Colleges And Universities Week, 2008

By the President of the United States of America

A Proclamation

Historically Black Colleges and Universities (HBCUs) are helping to extend lifelines of learning throughout our country. During Historically Black Colleges and Universities Week, we pay tribute to these distinguished institutions.

Our Nation's HBCUs help unlock the great potential within students by providing quality higher education to traditionally underserved communities. By offering all students an opportunity to develop their skills and talents, HBCUs are helping more Americans realize the promise of our Nation.

My Administration is committed to promoting equal opportunities and access to higher education for all students. Since 2001, funding for HBCUs and Historically Black Graduate Institutions has increased. Additionally, the College Cost Reduction and Access Act of 2007 makes college more affordable for low-income students by increasing funding for Federal Pell Grants by more than $11 billion. The Act also helps HBCUs increase educational opportunities in the critical fields of math, science, technology, and foreign languages. By educating all of America's students, we are investing in our next generation of leaders and contributing to a more hopeful people and a more prosperous America.

Throughout this week, we renew the call for this country to never rest until equality is real, opportunity is universal, and all citizens can realize their dreams. We also recognize our country's HBCUs and their important role in making these goals a reality.

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 September 7 through September 13, 2008, as National Historically Black Colleges and Universities Week. I call upon public officials, educators, librarians, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities in respect and appreciation for the contributions these valuable institutions and their graduates have made to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of September, 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. E8–20794
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