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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

9 CFR Part 121

[Docket No. APHIS–2007–0033]

RIN 0579–AC53

Agricultural Bioterrorism Protection Act of 2002; Biennial Review and Republication of the Select Agent and Toxin List

Correction

In rule document E8–23887 beginning on page 61325 in the issue of Thursday, October 16, 2008, make the following correction:

On page 61329, in the first column, in the second line, ''By April 14, 2008'' should read ''By April 14, 2009''.

[FR Doc. Z8–23887 Filed 10–24–08; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2008–0438]

RIN 3150–AI48

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision 5

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage cask regulations by revising the NAC International, Inc., NAC–UMS Universal Storage System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 5 to Certificate of Compliance (CoC) Number 1015. Amendment No. 5 will modify the CoC to incorporate certain high burnup pressurized water reactor (PWR) fuel as approved contents and to reflect those changes in the associated Technical Specifications (TS). In addition, the amendment to the CoC will include several other changes to the TS and the Final Safety Analysis Report (FSAR) to enhance the loading and storage operation of the NAC–UMS Universal Storage System.

DATES: The final rule is effective January 12, 2009, unless significant adverse comments are received by November 26, 2008. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Please include the following number RIN 3150–AI48 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission. You may submit comments by any one of the following methods:

E-mail comments to: Federal eRulemaking Portal *http://www.regulations.gov*; search docket ID: [NRC–2008–0438].

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

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone 301–415–1677).

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

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.* An electronic copy of the CoC No. 1015, the revised TS, and the preliminary safety evaluation report (SER) for Amendment 5 can be found under ADAMS Package Number ML081620083.

CoC No. 1015, the revised TS, the preliminary SER for Amendment No. 5, and the environmental assessment are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or

more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72, which added a new Subpart K within 10 CFR Part 72, entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on October 19, 2000 (65 FR 62581), that approved the NAC–UMS Universal Storage System cask design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1015.

Discussion

On September 22, 2006, and as supplemented on May 8, September 6, September 10, September 26, and November 30, 2007, and April 23 and May 8, 2008, the certificate holder, NAC International, Inc. (NAC), submitted an application to the NRC that requested an amendment to CoC No. 1015. Specifically, NAC requested modifications to the CoC to incorporate certain high burnup PWR fuel as approved contents and to reflect those changes in the associated TS. In addition, as set forth in the SER, NAC requested several other changes to the TS and the FSAR to enhance the loading and storage operation of the NAC–UMS dry storage cask system. As documented in the SER, the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the NAC–UMS Universal Storage System listing in 10 CFR 72.214 by adding Amendment No. 5 to CoC No. 1015. The amendment consists of the changes described above, as set forth in the revised CoC and TS. The particular TS which are changed are identified in the SER.

The amended NAC–UMS Universal Storage System, when used under the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured. Once this direct final rule becomes effective, entities holding a general license under 10 CFR 72.210 may load spent nuclear fuel into NAC–UMS casks that meet the criteria of Amendment No. 5 to CoC No. 1015, in accordance with 10 CFR 72.212.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1015 is revised by adding the effective date of Amendment Number 5.

Procedural Background

This rule is limited to the changes contained in Amendment 5 to CoC No. 1015 and does not include other aspects of the NAC–UMS dry storage cask system. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on January 12, 2009. However, if the NRC receives significant adverse comments on this direct final rule by November 26, 2008, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the NAC–UMS cask design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that contains generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear

and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES**, above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. This rule will amend the CoC for the NAC–UMS cask design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the CoC to incorporate certain high burnup PWR fuel as approved contents and to reflect those changes in the associated TS. In addition, the proposed amendment to the CoC would include several other changes to the TS and the FSAR to enhance the loading and storage operation of the NAC–UMS system. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

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

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On October 19, 2000 (65 FR 62581), the NRC issued an amendment to Part 72 that approved the NAC–UMS Universal Storage System cask design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On September 22, 2006, and as supplemented on May 8, September 6, September 10, September 26, and November 30, 2007, and April 23 and May 8, 2008, the certificate holder, NAC, submitted an application to the NRC to amend CoC No. 1015 to incorporate certain high burnup PWR fuel as approved contents and to reflect those changes in the associated TS. In addition, NAC requested several other changes to the TS and the FSAR to enhance the loading and storage operation of the NAC–UMS Universal Storage System.

The alternative to this action is to withhold approval of Amendment No. 5 and to require any Part 72 general licensee, seeking to load fuel into NAC–UMS casks under Amendment No. 5, to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested Part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC. These entities do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

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

Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as

amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1015 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1015.
Initial Certificate Effective Date: November 20, 2000.
Amendment Number 1 Effective Date: February 20, 2001.
Amendment Number 2 Effective Date: December 31, 2001.
Amendment Number 3 Effective Date: March 31, 2004.
Amendment Number 4 Effective Date: October 11, 2005.
Amendment Number 5 Effective Date: January 12, 2009.
SAR Submitted by: NAC International, Inc.
SAR Title: Final Safety Analysis Report for the NAC–UMS Universal Storage System.
Docket Number: 72–1015.
Certificate Expiration Date: November 20, 2020.
Model Number: NAC–UMS.

* * * * *

Dated at Rockville, Maryland, this 7th day of October 2008.

For the Nuclear Regulatory Commission.

R. W. Borchardt,

Executive Director for Operations.

[FR Doc. E8–25540 Filed 10–24–08; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1336]

Capital Adequacy Guidelines: Treatment of Perpetual Preferred Stock Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Correcting amendments.

SUMMARY: The Board published an interim final rule with request for public comment in the **Federal Register** on October 22, 2008 (73 FR 62851), providing that bank holding companies that issue new senior perpetual preferred stock to the U.S Department of Treasury under the capital purchase program announced by the Secretary of the Treasury on October 14, 2008, may include such capital instruments in Tier 1 capital for purposes of the Board's risk-based and leverage capital rules and guidelines for bank holding companies. The Public Law was cited incorrectly. This document corrects the citation in footnote 1 of the Supplementary Information and in the interim final regulation by revising these sections.

DATES: Effective October 27, 2008.

ADDRESSES: You may submit comments, identified by Docket No. R–1336, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Norah M. Barger, Deputy Director, (202) 452–2402, or John Connolly, Senior Project Manager, (202) 452–3621, Division of Banking Supervision and Regulation; or Kieran J. Fallon, Assistant General Counsel, (202) 452–5270, Mark E. Van Der Weide, Assistant General Counsel, (202) 452–2263, or Benjamin W. McDonough, Senior Attorney, (202) 452–2036, Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave., NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

SUPPLEMENTARY INFORMATION: On October 3, 2008, President Bush signed the Emergency Economic Stabilization Act of 2008 (Act) [1] into law.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

■ Accordingly, 12 CFR part 225 is corrected by making the following correcting amendment:

Authority and Issuance

■ For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends part 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 2. In appendix A to part 225, revise section II.A.1.a.ii.; and footnote 8 in section II.A.1.c.ii.(2) to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *
A. * * *
1. * * *
a. * * *
ii. Qualifying noncumulative perpetual preferred stock, including related surplus, and senior perpetual preferred stock issued

[1] Division A of Pub. L. No. 110–343, 122 Stat. 3765 (2008).

to the United States Department of the Treasury (Treasury) under the Troubled Asset Relief Program (TARP) established by the Emergency Economic Stabilization Act of 2008, Division A of Pub. L. No. 110–343 (which for purposes of this appendix shall be considered qualifying noncumulative perpetual preferred stock), including related surplus;

* * * * *

c. * * *

ii. * * *

(2) * * *

[8] Notwithstanding this provision, senior perpetual preferred stock issued to the Treasury under the TARP established by the Emergency Economic Stabilization Act of 2008, Division A of Pub. L. No. 110–343, may be included in tier 1 capital. In addition, traditional convertible perpetual preferred stock, which the holder must or can convert at a fixed number of common shares at a preset price, generally qualifies for inclusion in tier 1 capital provided all other requirements are met.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 22, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–25489 Filed 10–24–08; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID: OTS–2008–0013]

12 CFR Part 509

RIN 1550–AC27

Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustment

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 requires all federal agencies with statutory authority to impose civil money penalties (CMPs) to evaluate and adjust those CMPs every four years. OTS last adjusted its CMP statutes in 2004. Consequently, OTS is issuing this final rule to implement the required adjustments to OTS's CMP statutes.

DATES: *Effective Date:* October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Marvin L. Shaw, Senior Attorney, (202) 906–6639, Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 [1] (FCMPIAA) requires each agency to make inflationary adjustments to the CMPs in statutes that it administers.[2] Under the FCMPIAA, agencies must make those adjustments at least once every four years. OTS last adjusted its CMPs in 2004.[3] OTS's civil money penalty adjustment regulation is 12 CFR 509.103. An increased CMP applies only to violations that occur after the increase takes effect.

While the CMP statutes of many agencies provide for minimum and maximum penalty amounts, all of OTS's CMP statutes provide only for a daily maximum amount. Today's rule therefore refers only to maximum CMPs. Today's increases in maximum CMPs may not necessarily affect the amount of any CMP that OTS may seek for a particular violation. OTS calculates each CMP on a case-by-case basis based upon a variety of factors (including the gravity of the violation, whether the violation was willful or recurring, and any harm to the depository institution). As a result, the maximums merely serve as a cap.

Under the statute, the agency determines the inflation adjustment by increasing the maximum CMP by a ''cost-of-living'' adjustment. The ''cost-of-living'' adjustment is the percentage by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. OTS must use the CPI for All Urban Consumers (CPI–U) published by the Department of Labor.[4]

The statute contains specific rules for rounding any increase.[5] Agencies do not have discretion in choosing whether to adjust a maximum CMP, how much to adjust a maximum CMP or the methods used to determine the adjustment.

II. Summary of Calculation

To explain the inflation adjustment calculation, we will use the following example. Under 12 U.S.C. 1818(i), as adjusted under 12 CFR 509.103, OTS may impose a daily maximum third-tier CMP not to exceed $1,250,000 for violations of certain banking laws.

First, we determine the appropriate CPI–Us. The statute requires OTS to use the CPI–U for June of the calendar year preceding the year of adjustment. Here, because we are adjusting CMPs in 2008, we use the CPI–U for June 2007, which was 208.4. We must also determine the CPI–U for June of the year the CMP was last set by law or adjusted for inflation. Because OTS last adjusted the CMPs under 12 U.S.C. 1818 in 2004, we use the CPI–U for June 2004, which was 189.7.

Second, we calculate the cost of living adjustment or inflation factor. To do this, we divide the CPI–U for June 2007 (208.4) by the CPI–U for June 2004 (189.7). Our result is 1.098 (i.e., a 9.8 percent increase).[6]

Third, we calculate the raw inflation adjustment. To do this, we multiply the maximum penalty amounts by the inflation factor. In our example, $1,250,000 multiplied by the inflation factor of 1.098 equals $1,372,500.

Fourth, we round the raw inflation amounts according to the rounding rules in section 5(a) of the FCMPIAA. Since we round only the increased amount, we calculate the increased amount by the subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increased amount for the maximum penalty in our example is $122,500 (i.e., $1,372,500 less $1,250,000). Under the rounding rules, if the penalty is greater than $200,000, we round the increase to the nearest multiple of $25,000. Therefore, the maximum penalty increase for our example is $125,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, $1,250,000 plus $125,000 yields a maximum inflation adjusted penalty amount of $1,375,000.[7]

[1] 28 U.S.C. 2461 note.

[2] Some of OTS's CMPs are in a commonly administered statute, 12 U.S.C. 1818. Each agency that administers that statute is making identical adjustments.

[3] 12 CFR 509.103; 69 FR 64249 (November 4, 2004).

[4] *http://data.bls.gov/cgi-bin/surveymost.*

[5] 28 U.S.C. 2461 *note* specifies that ''Any increase determined under this subsection shall be rounded to the nearest—''(1) multiple of $10 in the case of penalties less than or equal to $100; ''(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000; ''(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; ''(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; ''(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and ''(6) multiple of $25,000 in the case of penalties greater than $200,000.''

[6] A few CMPs were not adjusted for inflation in 2004. In such cases, the inflation factor is calculated from the time that CMP was last adjusted. For a CMP that was last adjusted in 2000, the inflation factor would be 20.9 percent. For a CMP that was last adjusted in 1996, the inflation factor would be 33 percent.

[7] Three CMPs are treated slightly differently because the statutorily mandated computation and the rounding rules did not result in any adjustment

Continued

III. Need for and Immediately Effective Final Rule

To issue a final rule without public notice and comment, an agency must find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.[8] Similarly, to issue a rule that is immediately effective, the agency must find good cause for dispensing with the 30-day delay required by the Administrative Procedure Act.[9] Moreover, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 [10] requires that a regulation that imposes new requirements take effect on the first day of the quarter following publication of the final rule. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

Under the statute, agencies must make the required CMP inflation adjustments: (1) According to the very specific formula in the statute; and (2) within four years of the last inflation adjustment, or by October 31, 2008. Agencies have no discretion as to the amount or timing of the adjustment. The regulation is ministerial, technical, and noncontroversial. OTS is unable to vary the amounts of the adjustments to reflect any views or suggestions provided by commenters. Accordingly, OTS believes that notice and comment are unnecessary. For these same reasons, OTS believes that there is good cause to make this rule effective immediately upon publication.

IV. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a general notice of proposed rulemaking.[11] As already noted, OTS has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, OTS has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

V. Executive Order 12866

OTS has determined that this final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $133 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered

List of Subjects in 12 CFR Part 509

Administrative practice and procedure, Penalties.

■ Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below.

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

■ 1. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78(l), 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

■ 2. Section 509.103(c) is revised to read as follows:

§ 509.103 Civil money penalties.

* * * * *

(c) *Inflation adjustment.* Under the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), OTS must adjust for inflation the civil money penalties in statutes that it administers. The following chart displays the adjusted civil money penalties. The amounts in this chart apply to violations that occur after October 27, 2008:

U.S. Code citation	CMP description	New maximum amount
12 U.S.C. 1464(v)(4)	Reports of Condition—1st Tier	$2,200
12 U.S.C. 1464(v)(5)	Reports of Condition—2nd Tier	32,500
12 U.S.C. 1464(v)(6)	Reports of Condition—3rd Tier	1,375,000
12 U.S.C. 1467(d)	Refusal to Cooperate in Exam	7,500
12 U.S.C. 1467a(i)(2)	Holding Company Act Violation	32,500
12 U.S.C. 1467a(i)(3)	Holding Company Act Violation	32,500
12 U.S.C. 1467a(r)(1)	Late/Inaccurate Reports—1st Tier	2,200
12 U.S.C. 1467a(r)(2)	Late/Inaccurate Reports—2nd Tier	32,500
12 U.S.C. 1467a(r)(3)	Late/Inaccurate Reports—3rd Tier	1,375,000
12 U.S.C. 1817(j)(16)(A)	Change in Control—1st Tier	7,500
12 U.S.C. 1817(j)(16)(B)	Change in Control—2nd Tier	37,500
12 U.S.C. 1817(j)(16)(C)	Change in Control—3rd Tier	1,375,000
12 U.S.C. 1818(i)(2)(A)	Violation of Law or Unsafe or Unsound Practice—1st Tier	7,500
12 U.S.C. 1818(i)(2)(B)	Violation of Law or Unsafe or Unsound Practice—2nd Tier	37,500
12 U.S.C. 1818(i)(2)(C)	Violation of Law or Unsafe or Unsound Practice—3rd Tier	1,375,000
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post Employment Restrictions	275,000
12 U.S.C. 1884	Violation of Security Rules	110
12 U.S.C. 3349(b)	Appraisals Violation—1st Tier	7,500

in 2004. Two of those penalties—12 U.S.C. 1464(v)(4) and 12 U.S.C. 1467a(r)(1)—were last adjusted in 2000. For those two penalties, we compared the CPI–U for June 2000 (172.4) to the CPI–U for June 2007 (208.4), resulting in an inflation increase of 20.9%. The third penalty—12 U.S.C. 1984—was last adjusted in 1996. Accordingly, we compared the CPI–U for June 1996 (156.7) to the CPI–U for June 2007 (208.4), resulting in an inflation increase of 33%.

In addition, a new CMP related to post-employment restrictions for senior examiners in the amount of $275,000 has been added to the list of penalties (12 U.S.C. 1820(k)(6)(A)(ii)).

[8] 5 U.S.C. 553(b).

[9] *Id.*

[10] 12 U.S.C. 4802.

[11] 5 U.S.C. 603.

U.S. Code citation	CMP description	New maximum amount
12 U.S.C. 3349(b)	Appraisals Violation—2nd Tier	37,500
12 U.S.C. 3349(b)	Appraisals Violation—3rd Tier	1,375,000
42 U.S.C. 4012a(f)	Flood Insurance	[1] 385 [2] 135,000

[1] Per day.
[2] Per year.

Dated: October 20, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E8–25453 Filed 10–24–08; 8:45 am]

BILLING CODE 6720–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 140

RIN 3245–AF72

Debt Collection; Clarification of Administrative Wage Garnishment Regulation and Reassignment of Hearing Official

AGENCY: Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its Debt Collection regulations by clarifying terminology within the regulation and streamlining administrative wage garnishment hearing procedures. These modifications are few in number and result in revisions to the definition of terms and the process by which a debtor requests a hearing regarding administrative wage garnishment.

SBA believes that this rule is routine and noncontroversial, and the Agency anticipates no significant adverse comment. If SBA receives a significant adverse comment, it will withdraw the rule.

DATES: This rule is effective December 11, 2008, without further action, unless SBA receives a significant adverse comment by November 26, 2008. If SBA receives any significant adverse comments, the Agency will publish a timely withdrawal of this rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN: 3245–AF72, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting documents.
- *Mail, for paper, disk, or CD–ROM submissions:* Walter C. Intlekofer, Chief, Portfolio Management Division, 409 Third Street, SW., Mail Code 7024, Washington, DC 20416.
- *Hand Delivery/Courier:* Walter C. Intlekofer, Chief, Portfolio Management Division, 409 Third Street, SW., Mail Code 7024, Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov*, please submit the information to Walter C. Intlekofer, Chief, Portfolio Management Division, 409 Third Street, SW., Mail Code 7024, Washington, DC 20416, or send an e-mail to *walter.intlekofer@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make its final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Walter C. Intlekofer, Chief, Portfolio Management Division, 409 Third Street, SW., Mail Code 7024, Washington, DC 20416, (202) 205–7543 or *walter.intlekofer@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA regulations at 13 CFR 140.11 set forth the scope and processes by which SBA may institute administrative wage garnishment (''AWG'') against individuals in the collection of debts, as well as the process by which an individual may contest AWG. These regulations were promulgated in conjunction with U.S. Department of Treasury regulations concerning AWG. The process of AWG is implemented by Treasury on behalf of SBA through Treasury's debt cross-servicing program (in which Treasury pursues debts on behalf of SBA). Under the current § 140.11, debtors subject to AWG may request a hearing with SBA's Office of Hearings and Appeals (''OHA'') to contest the existence or amount of the debt, or the terms of repayment.

On implementation of AWG through the cross-servicing program, SBA became aware of certain issues regarding hearings requested by debtors regarding their AWG. First, § 140.11(d) and (e) refer to the authority of SBA to initiate AWG against its debtors and states that ''SBA will send a written notice'' of the AWG to the debtor. However, through cross-servicing, it is Treasury and its private contractors, not SBA, who initiate AWG on SBA's behalf, by sending the written notice. Thus, since § 140.11 was implemented in part to implement cross-servicing, it has become necessary to clarify the terminology throughout § 140.11 to make clear that not only SBA, but also public and private entities pursuing debt on SBA's behalf, may implement AWG against SBA's debtors.

This purpose is accomplished by redefining the term ''Agency'' in § 140.11, to include not only SBA, but also public and private entities that pursue debt on SBA's behalf. Thereafter, all other references throughout § 140.11 to ''SBA'' performing functions related to the implementation of AWG are changed to the ''Agency'' performing those functions, to make clear that not only SBA, but also public and private entities pursuing debt on SBA's behalf, may perform those functions under the regulation.

The second issue that arose on the implementation of AWG through the cross-servicing program relates to the hearing process itself. Under the current regulation, debtors who wish to contest the existence or amount of their debt, or the terms of repayment, must file for a hearing with an Administrative Judge at OHA, who is SBA's currently designated hearing official for SBA under § 140.11. Thereafter, those hearings are governed by the procedural rules set forth at Part 134 of Title 13 of the CFR. OHA procedures include full administrative litigation, with formal filings, deadlines, and motion practice. Additionally, SBA and Treasury discovered that the process of providing notice to debtors of their rights to request a hearing necessitated lengthy descriptions of the debtor's rights and duties to be transmitted with the notice of AWG.

Thus, OHA and SBA's Office of Financial Assistance have determined that by removing OHA's Administrative Judges and OHA procedures from the AWG hearing process, that process can be greatly simplified for not only debtors subject to AWG, but also to SBA. This purpose is accomplished by replacing references to OHA and the

Administrative Judge in § 140.11 with a ''hearing official,'' the definition of which, at § 140.11(f)(6), will be amended to replace ''Judge'' with ''qualified official designated in the pre-garnishment notice.'' Further, § 140.11(f)(1) will be amended to remove the reference to OHA regulations and be replaced with language stating that the entirety of the hearing procedures are contained within § 140.11.

These changes will bring § 140.11 more closely in line with Treasury's AWG and cross-servicing regulations at 31 CFR 285.11 and 285.12, upon which § 140.11 is based and which do not contemplate any additional hearing procedures than those that exist at 31 CFR 285.11 (such as the OHA at 13 CFR 134, incorporated into § 140.11).

Consideration of Comments

This is a direct final rule, and SBA will review all comments. SBA believes that this rule is routine and noncontroversial, and SBA anticipates no significant adverse comments to this rulemaking. If SBA receives any significant adverse comments, it will publish a timely withdrawal of this direct final rule.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

OMB has determined that this direct final rule is not a ''significant'' regulatory action for purposes of Executive Order (E.O.) 12866. This direct final rule results in changes to nomenclature and hearing procedure.

For purposes of E.O. 12988, SBA has determined that this rule is drafted, to the extent practicable, under the standards established in that order.

For purposes of E.O. 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose any new reporting or recordkeeping requirements.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires analysis of a rule only where notice and comment rulemaking are required. Rules are exempt from Administrative Procedure Act (APA) notice and comment requirements, and therefore from the RFA requirements, when the agency for good cause finds (and incorporates the finding and brief statement of reasons in the rules issued) that notice and public procedure thereon is impracticable, unnecessary or contrary to the public interest. In this case it would be unnecessary in light of the non-controversial nature of the rule.

List of Subjects in 13 CFR Part 140

Claims, Government employees, Income taxes, Wages.

■ For the reasons set forth in the preamble, SBA amends 13 CFR Part 140 as follows:

PART 140—DEBT COLLECTION

■ 1. The authority citation for Part 140 continues to read as follows:

Authority: 5 U.S.C. 5514; 15 U.S.C. 634(b)(6); 31 U.S.C. 3711, 3716, 3720, 3720A and 3720D.

Subpart C—Administrative Wage Garnishment

§ 140.11 [Amended]

■ 2. Section 140.11 is amended as follows:

■ a. In § 140.11(c) revise the definition for the term, ''*Agency*'' to read as set forth below.

■ b. Remove the words ''SBA'' or ''the SBA'' and add, in their place, the words ''the Agency,'' wherever they appear in the following places:

1. § 140.11(c), in the definition for the term, *Evidence of Service*,
2. § 140.11(d),
3. § 140.11(e) heading, (e)(1) introductory text, and (e)(1)(ii),
4. § 140.11(e)(3),
5. § 140.11(f)(4),
6. § 140.11(f)(5),
7. § 140.11(f)10),
8. § 140.11(g)(1) introductory text and (g)(1)(i),
9. § 140.11(g)(3),
10. § 140.11(h),
11. § 140.11(i)(3)(i), (ii), and (iii),
12. § 140.11(i)(4),
13. § 140.11(i)(5),
14. § 140.11(i)(7),
15. § 140.11(i)(8),
16. § 140.11(j),
17. § 140.11(k)(1), in the first sentence only,
18. § 140.11(k)(3),
19. § 140.11(l)(1) and (2),
20. § 140.11(m)
21. § 140.11(n)(1) introductory text and (n)(1)(ii), and
22. § 140.11(o).

■ c. In § 140.11(e), introductory text, remove the words ''*What notice must the SBA give you before beginning an administrative wage garnishment*?'' and add, in their place, the words ''*Notice Requirements*.''

■ d. In § 140.11(e)(2)(iii), remove the words ''at SBA's Office of Hearings and Appeals (OHA)'' and add, in their place, the words ''before an SBA hearing official.''

■ e. In § 140.11(f)(1), remove the words ''Unless they expressly conflict with this section, the rules of procedure governing cases before OHA apply to administrative wage garnishment hearings'' and add, in their place, the words ''Procedural rules for the conduct of administrative wage garnishment hearings are established in this section.''

■ f. Revise § 140.11(f)(6) to read as set forth below.

■ g. Remove the words ''at OHA'' and add, in their place, the words ''by the Hearing Official'' in the following places:

1. § 140.11(f)(4), and
2. § 140.11(f)(5).

■ h. Remove the word ''Judge'' and add, in its place, the words ''Hearing Official'' wherever they appear in the following places:

1. § 140.11(f)(3)(i), (ii), and (iii),
2. § 140.11(f)(4),
3. § 140.11(f)(5),
4. § 140.11(f)(7),
5. § 140.11(f)(9),
6. § 140.11(f)(10),
7. § 140.11(g).

■ i. Remove the word ''Judge's'' and add, in its place, the words ''Hearing Official's'' wherever they appear in the following places:

1. § 140.11(f)(10), and
2. § 140.11(f)(11)(ii).

■ j. Revise § 140.11(f)(12) to read as set forth below.

■ k. In § 140.11(g)(1)(ii), remove the words ''the Judge renders a final decision'' and add, in their place, the words ''the final agency decision.''

The revisions read as follows:

§ 140.11 What type of debt is subject to administrative wage garnishment, and how can SBA administratively garnish your pay?

* * * * *

(c) * * *

Agency means the SBA or any entity, public or private, that pursues recovery of the debt on SBA's behalf.

* * * * *

(f) * * *

(6) *Hearing official.* A hearing official may be any qualified individual designated in the pre-garnishment notice.

* * * * *

(12) *Final agency action.* The decision of the hearing official is the final agency decision for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

* * * * *

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E8–25324 Filed 10–24–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0808; Directorate Identifier 2008–NE–18–AD; Amendment 39–15712; AD 2008–22–16]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CT58 Series Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain GE CT58 series turboshaft engines. This AD requires recalculating the lives of certain part numbered compressor spools using a new repetitive heavy lift (RHL) multiplying factor. This AD results from reports of cracks originating from the inner faces of the locking screw holes in the compressor spool. We are issuing this AD to prevent cracks due to RHL missions. Cracks could result in an uncontained rotor burst and damage to, or loss of, the helicopter and serious injuries to any person onboard.

DATES: This AD becomes effective December 1, 2008.

ADDRESSES: You can get the service information identified in this AD from GE Aircraft Engines Customer Support Center, M/D 285, 1 Neumann Way, Evendale, OH 45215; telephone (513) 552–3272; fax (513) 552–3329; e-mail *GEAE.csc@ae.ge.com.*

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

FOR FURTHER INFORMATION CONTACT: Christopher J. Richards, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.j.richards@faa.gov*; telephone (781) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to certain GE CT58 series turboshaft engines. We published the proposed AD in the **Federal Register** on July 23, 2008 (73 FR 42724). That action proposed to require recalculating the cycles on certain compressor spools using new RHL mission multipliers within 30 days after the effective date of the proposed AD.

Examining the AD Docket

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

Comments

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

Conclusion

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

Costs of Compliance

We estimate that this proposed AD will affect 89 engines installed on helicopters of U.S. registry. We also estimate that it will take about 0.5 work-hour per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. Prorated life lost for the compressor spools will cost about $16,972 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $1,514,068.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–22–16 General Electric Company (GE): Amendment 39–15712. Docket No. FAA–2008–0808; Directorate Identifier 2008–NE–18–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 1, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to GE CT58 series turboshaft engines with a compressor spool, part number (P/N) 5920T82G07, 6010T57G07, or 6010T57G08, installed. These engines are installed on, but not limited to, Sikorsky S–61A, S–61L, S–61N, S–61R, S–62, and Columbia 107–II helicopters.

Unsafe Condition

(d) This AD results from reports of cracks originating from the inner faces of the locking screw holes in the compressor spool. We are issuing this AD to prevent cracks due to repetitive heavy lift (RHL) missions. Cracks could result in an uncontained rotor burst and damage to, or loss of, the helicopter and serious injuries to any person onboard.

Compliance

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

Recalculating Compressor Spool Cycles

(f) Within 30 days after the effective date of this AD, recalculate the life of compressor spools, P/N 5920T82G07, 6010T57G07, or 6010T57G08, using an RHL mission multiplying factor of both 3.7 cycles per hour and 6.0 cycles per hour. GE Alert Service Bulletin CT58 S/B 72–A0162, Revision 12, dated April 17, 2008, contains information on calculating life cycles for the compressor spools.

Removing Compressor Spools Based on the New Recalculated Cycles

(g) Before January 1, 2010, remove the compressor spools, P/N 5920T82G07, 6010T57G07, or 6010T57G08, at the earlier of when:

(1) The compressor spool reaches its part life limit as calculated using an RHL multiplying factor of 3.7, or

(2) You can see the spool at shop visit after it has reached its part life limit using an RHL multiplying factor of 6.0.

(h) On January 1, 2010 and thereafter, remove the engine before the compressor spool exceeds its part life limit as calculated using an RHL multiplying factor of 6.0.

(i) As of January 1, 2010, don't use an RHL multiplying factor of 3.7 to calculate the life of the compressor spool.

Installation Prohibition

(j) After the effective date of this AD, don't install any engine that has a compressor spool installed that meets or exceeds the life limits as calculated in paragraph (g)(1) through (g)(2) or (h) of this AD.

Alternative Methods of Compliance

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

Related Information

(l) GE Alert Service Bulletin CT58 S/B 72–A0162, Revision 12, dated April 17, 2008, pertains to the subject of this AD.

(m) Contact Christopher J. Richards, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.j.richards@faa.gov*; telephone (781) 238–7133; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(n) None.

Issued in Burlington, Massachusetts, on October 20, 2008.

Peter A. White,

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

[FR Doc. E8–25442 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 417

[Docket No. FAA–2000–7953; Amendment No. 417]

RIN 2120–AG37

Licensing and Safety Requirements for Launch

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action corrects reference errors that appeared in a final rule the FAA published in the **Federal Register** on August 25, 2006. The final rule amended commercial space transportation regulations governing the launch of expendable launch vehicles. In that final rule, the FAA inadvertently referenced incorrect sections. The intent of this action is to correct this minor error in the regulation to ensure the requirement is clear and accurate.

DATES: Effective October 27, 2008.

FOR FURTHER INFORMATION CONTACT: René Rey, Licensing and Safety Division, AST–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7538; e-mail *Rene.Rey@faa.gov.* For questions regarding legal interpretation, contact Laura Montgomery, AGC–200, (202) 267–3150; e-mail *laura.montgomery@faa.gov.*

SUPPLEMENTARY INFORMATION: On August 25, 2006, the FAA published a final rule in the **Federal Register** (71 FR 50537) that, among other changes, amended § 417.25(c)(3). The FAA inadvertently referenced incorrect sections in 14 CFR 417.25(c)(3). As published, this provision requires a post launch report to identify any flight environment not consistent with the maximum predicted environment as required by § 417.307(b) and any measured wind profiles not consistent with the predictions used for the launch, as required by § 417.217(d)(2). These references are incorrect. They should refer launch operators to Appendix D 417.7(b) and Appendix A 417.7(g)(3), respectively.

This amendment will not impose any additional restrictions on operators affected by these regulations.

Technical Amendment

This technical amendment corrects the references in § 417.25(c)(3).

Justification for Immediate Adoption

Because this action merely corrects a reference made in the published rule, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is not necessary. For the same reason, the FAA finds good cause exists under 5 U.S.C. 553(d) for making this rule effective upon publication.

List of Subjects in 14 CFR Part 417

Aviation safety, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 417 is amended as follows:

PART 417—LAUNCH SAFETY

■ 1. The authority citation for part 417 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

■ 2. Amend § 417.25 by revising paragraph (c)(3) to read as follows:

§ 417.25 Post launch report.

(c) * * *

(3) For the launch of launch vehicle flown with a flight safety system, identify any flight environment not consistent with the maximum predicted environment as required by D 417.7(b) and any measured wind profiles not consistent with the predictions used for the launch, as required by § 417.7(g)(3); and

* * * * *

Issued in Washington, DC on October 22, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E8–25506 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

20 CFR Part 1002

[Docket No. VETS–U–04]

RIN 1293–AA14

Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994; Correction

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Amendment to final rule.

SUMMARY: In this rulemaking, the Veterans' Employment and Training Service (VETS) is correcting and consolidating the text in parts A and B of the appendix to 20 CFR part 1002 (''Notice of Your Rights Under USERRA''). VETS published the appendix on March 10, 2005 in response to the Veterans Benefits Improvement Act of 2004 (VBIA). The VBIA amended the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) by requiring employers to notify affected employees of the rights, benefits, and obligations of employees and employers under USERRA. As published, the text of the required USERRA rights notice included information about a temporary demonstration project established under the VBIA that called for VETS to transfer to the Office of Special Counsel some claims brought against Federal executive agencies. The demonstration project ended on December 31, 2007.

This rulemaking is therefore deleting this outdated reference from the text of the USERRA rights notice. In addition, this rulemaking is consolidating the text in parts A and B of the required USERRA rights notice to eliminate the need for separate notices for Federal and non-Federal agency employers. This rulemaking does not require employers to replace the notices currently in use because, even without this correction and consolidation, the current notices comply with the USERRA employee-notification requirements.

DATES: *Effective Date:* The correction issued under this rulemaking is effective on October 27, 2008.

FOR FURTHER INFORMATION CONTACT: For information about this correction notice, contact Mr. Kenan Torrans, Office of Operations and Programs, Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210. *Telephone:* 202–693–4731 (this is not a toll-free number); *electronic mail: torrans-william@dol.gov*. For press inquiries, contact Mr. Michael Biddle, Office of Public Affairs, U.S. Department of Labor, Room S–1032, 200 Constitution Avenue, NW., Washington, DC 20210. *Telephone:* 202–693–5051 (this is not a toll-free number); *electronic mail: biddle.michael@dol.gov*. Individuals with hearing or speech impairments may access these telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. 4301–4334) provides employment and reemployment rights for members of the uniformed services, including veterans and members of the Reserve and National Guard. Under USERRA, service members who leave their civilian jobs for military service can perform their duties with assurance that they will be able to return to their jobs with the same pay, benefits, and status they would have attained had they not been away on duty. USERRA also prohibits employers from discriminating against these individuals in employment because of their military service.

The Veterans Benefits Improvement Act of 2004 (VBIA), Public Law No. 108–454 (Dec. 10, 2004), amended several provisions of USERRA. In part, the VBIA required that:

> Each employer shall provide to persons entitled to rights and benefits under [USERRA] a notice of the rights, benefits, and obligations of such persons and such employers under [USERRA].

(38 U.S.C. 4334.) The VBIA required the Department of Labor to make available to employers the text of the USERRA rights notice. DOL, through the Veterans' Employment and Training Service (VETS), published an interim final rule in the **Federal Register** providing the text of the USERRA rights notice on March 10, 2005 (70 FR 12106), and published the final rule on December 19, 2005 (70 FR 75313).

The VBIA also established a demonstration project under which VETS would transfer about half of the USERRA claims brought against Federal executive agencies to the Office of Special Counsel (OSC) for investigation and resolution. The demonstration project began on February 8, 2005, and ended on December 31, 2007.

Because of OSC's role in investigating and resolving certain complaints against Federal agency employers during the demonstration project, VETS made available two separate texts of the USERRA rights notice—one for use by private-sector and State-government employers (Text A), and one for Federal executive agencies (Text B). The USERRA rights notice used by Federal executive agencies expressly referenced OSC's role in investigating and resolving certain complaints against such agencies during the demonstration project:

> In some cases involving USERRA claims against Federal executive agencies, a complaint filed with VETS before September 30, 2007 may be transferred to the Office of Special Counsel for investigation and resolution pursuant to a demonstration project established under Section 204 of the Veterans Benefits Improvement Act of 2004, Public Law No. 108–454 (Dec. 10, 2004).
>
> • If VETS is unable to resolve a complaint that has not been transferred for investigation under the demonstration project, you may request that your case be referred to the Office of Special Counsel for representation.

Because the demonstration project ended by operation of law on December 31, 2007, VETS, through this rulemaking, is correcting the Federal USERRA rights notice by deleting the reference to the demonstration project. VETS is also consolidating the text relating to enforcement of claims in parts A and B of the USERRA rights notice because there is no longer a need for separate notices for Federal and non-Federal agency employers. However, posting one of the original USERRA rights notices published on December 19, 2005, will continue to comply with the USERRA notice requirement because the conditional language of the reference to the demonstration project does not affect the remaining substantive information in the Federal USERRA rights notice. The text of either the original or corrected Federal USERRA rights notice will meet the requirements of the law.

II. Exemption From Notice-and-Comment Procedures

VETS has determined that the correction made by this rulemaking is not subject to the procedures for public notice-and-comment rulemaking specified under the Administrative Procedure Act because the correction is a general statement of policy under 5 U.S.C. 553(b)(3)(A), and does not affect the substantive requirements or coverage of 20 CFR 1002 (''Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994''). This correction notice does not modify or revoke existing rights and obligations of employees or

employers, and it does not establish new rights and obligations (*see Public Citizen* v. *Department of State,* 276 F.3d 634, 640–41 (D.C. Cir. 2002); *American Hospital Ass'n* v. *Bowen,* 834 F.2d 1037, 1047 (D.C. Cir. 1987)). Under this rulemaking, VETS is merely consolidating and correcting conditional, outdated information contained in the appendix to its USERRA regulations, and permitting employers to retain the current, uncorrected notices that inform employees of the rights, benefits, and obligations of employees and employers under USERRA.

This rulemaking imposes no economic burden on employers subject to USERRA employee-notification requirements because covered employers can comply with these requirements by posting in the workplace the text of the original USERRA rights notice provided by VETS in a previous rulemaking. Further, this rule results in no burdens under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) or the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; September 30, 1993).

List of Subjects in 20 CFR Part 1002

Administrative practice and procedure, Employment, Enforcement, Labor, Veterans, Working conditions.

Authority: 38 U.S.C. 4331(a), 4334(b); Secretary of Labor's Order No. 03–2004.

Signed at Washington, DC, on October 9, 2008.

John M. McWilliam,

Deputy Assistant Secretary of Labor for Veterans' Employment and Training.

■ Based on the explanations provided by the preamble, VETS is amending 20 CFR part 1002 as follows:

PART 1002—REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: Section 4331(a) of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4331(a) (Pub. L. 103–353, 108 Stat. 3150).

■ 2. Revise the Appendix to part 1002 to read as follows:

Appendix to Part 1002—Notice of Your Rights Under USERRA

Pursuant to 38 U.S.C. 4334(a), each employer shall provide to persons entitled to rights and benefits under USERRA a notice of the rights, benefits, and obligations of such persons and such employers under USERRA. The requirement for the provision of notice under this section may be met by posting the following notice where employers customarily place notices for employees. Posting one of the original notices published in 70 FR 75316 (Dec. 19, 2005) will also satisfy this requirement. The following text is provided by the Secretary of Labor to employers pursuant to 38 U.S.C. 4334(b).

Text for Use by All Employers

Your Rights Under USERRA

A. The Uniformed Services Employment and Reemployment Rights Act

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

B. Reemployment Rights

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- You ensure that your employer receives advance written or verbal notice of your service;
- You have five years or less of cumulative service in the uniformed services while with that particular employer;
- You return to work or apply for reemployment in a timely manner after conclusion of service; and
- You have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

C. Right To Be Free From Discrimination and Retaliation

If you:

- Are a past or present member of the uniformed service;
- Have applied for membership in the uniformed service; or
- Are obligated to serve in the uniformed service; then an employer may not deny you
- Initial employment;
- Reemployment;
- Retention in employment;
- Promotion; or
- Any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

D. Health Insurance Protection

- If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- Even if you do not elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

E. Enforcement

- The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.

For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1–866–4–USA–DOL or visit its Web site at *http://www.dol.gov/vets.* An interactive online USERRA Advisor can be viewed at *http://www.dol.gov/elaws/userra.htm.*

- If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.
- You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the Internet at this address: *http://www.dol.gov/vets/programs/userra/poster.htm.* Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees. U.S. Department of Labor, Veterans' Employment and Training Service, 1–866–487–2365.

[FR Doc. E8–25447 Filed 10–24–08; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–1041]

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Witt Penn Bridge across the Hackensack River, mile 3.1, at Jersey City, New Jersey. Under this temporary deviation the bridge may remain in the closed position for one

day to facilitate bridge maintenance. Vessels that can pass under the draw without a bridge opening may do so at all times.

DATES: This deviation is effective from 7 a.m. to 3 p.m. on October 25, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1041 and are available online at *www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

The Witt Penn Bridge, across the Hackensack River, mile 3.1, at Jersey City, New Jersey, has a vertical clearance in the closed position of 35 feet at mean high water and 40 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.5.

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

The owner of the bridge, New Jersey Department of Transportation, requested a temporary deviation to facilitate the replacement of deflector sheaves at the bridge.

Under this temporary deviation the Witt Penn Bridge may remain in the closed position from 7 a.m. to 3 p.m. on October 25, 2008. Vessels that can pass under the bridge without a bridge opening may do so at all times.

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

Dated: October 16, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–25520 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–1007]

Drawbridge Operation Regulations; Jamaica Bay, New York, NY, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Beach Channel Railroad Bridge at mile 6.7, across Jamaica Bay, at New York City, New York. Under this temporary deviation the Beach Channel Railroad Bridge may remain in the closed position for three weekends in November. This deviation is necessary to facilitate bridge track repairs.

DATES: This deviation is effective from November 8, 2008 through November 23, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–10007 and are available online at *www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Beach Channel Railroad Bridge, across Jamaica Bay, mile 6.7, at New York, New York, has a vertical clearance in the closed position of 26 feet at mean high water and 31 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.5.

The owner of the bridge, New York City Transit Authority, requested a temporary deviation to facilitate maintenance repairs to the bridge rails.

Under this temporary deviation the Beach Channel Railroad Bridge need not open for the passage of vessel traffic on Saturday and Sunday between 6 a.m. and 9 p.m., on November 8, 9, 15, 16, 22, and 23, 2008.

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

Dated: October 16, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–25527 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1052]

RIN 1625–AA11

Regulated Navigation Area and Safety Zone, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is revising the dates and reinstating a temporary regulated navigation area and safety zone on the Chicago Sanitary and Ship Canal near Romeoville, IL. This regulated navigation area and safety zone places navigational and operational restrictions on all vessels transiting through the electrical dispersal barrier IIA.

DATES: This rule is effective from October 16, 2008, to November 1, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1052 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–1052 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays, and the U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207 between 8:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216–902–6049. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 12, 2008, we published a Notice of Proposed Rulemaking (NPRM) entitled Regulated Navigation Area and Safety Zone, Chicago Sanitary and Ship Canal, Romeoville, IL, in the **Federal Register** (73 FR 3337)and on July 2, 2008 we published a temporary final rule (73 FR 37810). On August 7, 2008, we published a temporary final rule that revised and reinstated the rule that had previously been published on July 2, 2008 (73 FR 45875). The regulated navigation area established by that rule will end on October 15. This rule reinstates the Temporary Final Rule published on August 7, 2008. This Temporary Final Rule is necessary because work on the Demonstration Barrier is not completed. This rule will be in effect from October 16, 2008 until November 1, 2008.

Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This regulated navigation area and safety zone was implemented for an emergency situation and required continued activation. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

The electrodes on the demonstration electrical dispersal barrier 1 located between Mile Markers 296.1 and 296.7 of the Chicago Sanitary and Ship Canal are beginning to fail. This barrier was constructed to prevent Asian Carp from entering Lake Michigan through the Illinois River system by generating a low-voltage electric field across the canal. The Army Corps of Engineers has shutdown barrier 1 and needs additional time to finish the process of replacing the barrier electrodes which run across the bottom of the canal. Divers will be in the water and a barge-mounted crane will be operating during maintenance operations to barrier 1. Electrical dispersal barrier IIA located on the Chicago Sanitary and Ship Canal 270 feet south of Mile Marker 296.1 to Mile Marker 296.7 will be in operation while repairs are being made to demonstration electrical dispersal barrier 1. Barrier IIA operated continuously for a two week period before taking barrier 1 off line for electrode replacement. Electrical dispersal barrier IIA generates a more powerful electric field than barrier 1 over a larger area within the Chicago Sanitary and Ship Canal.

The Coast Guard and U.S. Army Corps of Engineers conducted field tests to ensure the continued safe navigation of commercial and recreational traffic across the barrier; however, results indicated an arcing risk and hazardous electrical discharges as vessels transited the barrier posing a serious risk to navigation through the barrier. To mitigate these risks, navigational and operational restrictions will be placed on all vessels transiting through the vicinity. Until the potential electrical hazards can be rectified, the Coast Guard will require vessels transiting the regulated navigation area to adhere to specified operational and navigational requirements. This regulation will be an additional 16 days in length to provide enough time for maintenance to be completed. This type of maintenance has never been performed on Barrier I and therefore, an extended amount of time was needed.

Discussion of Rule

This rule will suspend 33 CFR 165.923 and place additional restrictions on all vessels transiting through electrical dispersal barrier IIA located on the Chicago Sanitary and Ship Canal from October 15, 2008, until November 1, 2008. The regulated navigation area encompasses all waters of the Chicago Sanitary and Ship Canal 270 feet south of the Romeo Road Bridge Mile Marker 296.1 to the south side of the Aerial Pipeline Mile Marker 296.7. The requirements placed on all vessels include: All up-bound and down-bound barge tows that contain one or more Red Flag barges transiting through the restricted navigation area must be assisted by a bow boat at least one mile above the restricted navigation area to at least one mile below the restricted navigation area. Red Flag barges are barges containing hazardous materials as identified by Commodity Codes:

01 (Empty with previous hazardous material)
20 (Petroleum and Petroleum Products)
21 (Crude Petroleum)
22 (Gasoline, Jet Fuel and Kerosene)
23 (Distillate, Residual and other Fuel Oils; Lubricating Oils and Greases)
24 (Petroleum Pitches, Coke Asphalt, Naphtha and Solvents)
30 (Chemicals and Related Products)
31 (Fertilizer-Nitrogenous, Potassic, Phosphatic and Others)
32 (Organic Industrial Chemicals {Crude Products} from Coal, Tar, Petroleum and Natural Gas, Dyes, Organic Pigment Dying and Tanning Materials, Alcohols, Benzene; Inorganic Industrial Chemicals {Sodium Hydroxide}; Radioactive and Associated Materials; Drugs)

The U.S. Army Corps of Engineers will contract bow boat assistance for barge tows containing one or more Red Flag barges. Information on how to contact the contractor for bow boat assistance will be provided to the public in a Broadcast Notice to Mariners. Towing assistance will be provided from at least one mile above the restricted navigation area to at least one mile below the restricted navigation area.

This rule prohibits all vessels from loitering in the regulated navigation area; vessels may enter the regulated navigation area for the sole purpose of transiting to the other side, and must maintain headway throughout the transit. The rule also requires all personnel on open decks to wear a Coast Guard approved Type I personal flotation device while in the regulated navigation area. In addition, vessels may not moor or lay up on the right or left descending banks in the regulated navigation area; towboats may not make or break tows in the regulated navigation area; vessels may not pass (meet or overtake) in the regulated navigation area. All vessels must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side. Finally, commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

These restrictions are necessary for safe navigation of the regulated navigation area and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during safety tests conducted by the U.S. Army Corps of Engineers. Deviation from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representative. The Commander, Ninth Coast Guard District will designate Captain of the Port, Lake Michigan as

his designated representative for the purposes of this rule.

A temporary safety zone will be in place while repairs are being made to barrier 1. This temporary safety zone is necessary to ensure the safety of workers and vessels during maintenance operations to barrier 1 on the Chicago and Sanitary Ship Canal.

The maintenance on barrier 1 will occur between 7 a.m., October 16, 2008, and 5 p.m., November 1, 2008. The safety zone will be enforced from 7 a.m. to 12 p.m. and 1 p.m. to 5 p.m. on October 16, 2008, through November 1, 2008. The safety zone will encompass all waters of the Chicago Sanitary Ship Canal from mile marker 296.1 to mile marker 296.7.

The Captain of the Port will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port will issue a broadcast Notice to Mariners notifying the public when enforcement of the safety zone is terminated.

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the fact that traffic will still be able to transit through the regulated navigation area and the minimal time that vessels will be restricted from the safety zone. The safety zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

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

This rule would affect the following entities, some of which might be small: The owners and operators of vessels intending to transit or anchor in a portion of the Chicago Sanitary Ship Canal from October 16, 2008, to November 1, 2008.

This regulated navigation area and safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic will be able to transit through the regulated navigation area. The U.S. Army Corps of Engineers will contract bow boat assistance for barge tows containing one or more Red Flag barges. Vessel traffic will only be limited for one five-hour period and one four-hour period each day the safety zone is in effect. In the event this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, OH 44199; 216–902–6049. 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 would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under 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.

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, and Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.923 [Suspended]

■ 2. Section 165.923 is suspended from October 16, 2008, until November 1, 2008.

■ 3. A new temporary § 165.T09–4004 is added as follows:

§ 165.T09–4004 Temporary Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Regulated Navigation Area*. The following is a Regulated Navigation Area: All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL 270 feet south of the Romeo Road Bridge Mile Marker 296.1 to the south side of the Aerial Pipeline Mile Marker 296.7.

(b) *Effective period*. This section is effective from October 16, 2008, until November 1, 2008.

(c) *Definitions*. The following definitions apply to this section: *Designated representative* means the Captain of the Port Lake Michigan.

Red Flag barges means barges containing hazardous materials as identified by the following Commodity Codes:

(1) 01 (Empty with previous hazardous material);

(2) 20 (Petroleum and Petroleum Products);

(3) 21 (Crude Petroleum);

(4) 22 (Gasoline, Jet Fuel and Kerosene);

(5) 23 (Distillate, Residual and other Fuel Oils; Lubricating Oils and Greases);

(6) 24 (Petroleum Pitches, Coke Asphalt, Naphtha and Solvents);

(7) 30 (Chemicals and Related Products);

(8) 31 (Fertilizer-Nitrogenous, Potassic, Phosphatic and Others); and

(9) 32 (Organic Industrial Chemicals {Crude Products} from Coal, Tar, Petroleum and Natural Gas, Dyes, Organic Pigment Dying and Tanning Materials, Alcohols, Benzene; Inorganic Industrial Chemicals {Sodium Hydroxide}; Radioactive and Associated Materials; Drugs)

(d) *Regulations*. (1) The general regulations contained in 33 CFR 165.13 apply.

(2) All up-bound and down-bound barge tows that contain one or more Red Flag barges transiting through the restricted navigation area must be assisted by a bow boat until the entire tow is clear of the expanded restricted navigation area boundaries.

(i) Information on how to contact the contractor for bow boat assistance will be provided to the public in a Broadcast Notice to Mariners.

(ii) Towing assistance will be provided from at least one mile above the restricted navigation area to at least one mile below the restricted navigation area.

(3) All vessels are prohibited from loitering in the regulated navigation area.

(4) Vessels may enter the regulated navigation area for the sole purpose of transiting to the other side, and must maintain headway throughout the transit.

(5) All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the regulated navigation area.

(6) Vessels may not moor or lay up on the right or left descending banks of the regulated navigation area.

(7) Towboats may not make or break tows in the regulated navigation area.

(8) Vessels may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side.

(9) Commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(e) *Compliance*. All persons and vessels must comply with this section and any additional instructions of the Ninth Coast Guard District Commander, or his designated representative.

■ 4. A new temporary section 165.T09–4005 is added as follows:

§ 165.T09–4005 Safety Zone; Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Safety Zone*. The following area is a temporary safety zone: All waters of the Chicago Sanitary and Ship Canal from mile marker 296.1 to 296.7.

(b) *Effective period*. This regulation is effective from 7 a.m., October 16, 2008, to 5 p.m., November 1, 2008. The safety zone will be enforced from 7 a.m. to 12 p.m. and 1 p.m. to 5 p.m. on October 16, 2008, through November 1, 2008.

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

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

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

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

Dated: October 10, 2008.

Peter V. Neffenger,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. E8–25518 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0755]

RIN 1625–AA00

Temporary Safety Zone: LST–1166 Safety Zone, Southeastern Tip of Lord Island, Columbia River, Rainier, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Columbia River encompassed in a 500 foot radius surrounding LST–1166, which is a vessel located near the southeastern tip of Lord Island at position 46°07′18″ N 123°00′51″ W adjacent to the Oregon shoreline. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Portland, Oregon or his designated representatives. The Captain of the Port is taking this action to help ensure the safety of the maritime public as well as the individuals conducting oil and hazardous material clean-up operations on LST–1166.

DATES: This rule is effective from 1 p.m. on October 03, 2008 until 8 p.m. on December 15, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0755 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–0755 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying 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 Coast Guard Sector Portland, 6767 N. Basin Ave., Portland, OR 97217, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call BM2 Joshua Lehner, Coast Guard Sector Portland, at (503) 240–9311. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be contrary to the public interest to do so since the safety zone is immediately necessary to ensure the safety of the maritime public and individuals conducting oil and hazardous material clean-up operations on LST–1166 as current clean-up operations continue.

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** because it would be contrary to the public interest to do so since the safety zone is immediately necessary to ensure the safety of the maritime public and individuals conducting oil and hazardous material clean-up operations on LST–1166 as current clean-up operations continue.

Background and Purpose

LST–1166 is currently undergoing intensive clean-up operations to remove oil and hazardous wastes from the vessel. The safety zone established by this rule is necessary to help ensure the safety of the maritime public from exposure to any oil and hazardous materials that may escape from the confines of the vessel as well as the individuals conducting the clean-up operations from maritime traffic operating in the area. The safety zone will help ensure the safety of the maritime public and the individuals conducting the clean-up operations on LST–1166 by prohibiting maritime traffic from coming closer than 500 feet from the vessel.

Discussion of Rule

This rule establishes a temporary safety zone on the waters of the Columbia River encompassed in a 500 foot radius surrounding LST–1166, which is a vessel located near the southeastern tip of Lord Island at position 46°07′18″ N 123°00′51″ W adjacent to the Oregon shoreline. Entry into this safety zone is prohibited unless

authorized by the Captain of the Port, Portland, Oregon or his designated representatives. The rule is effective from 1 p.m. on October 03, 2008 until 8 p.m. on December 15, 2008.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Specifically, the economic impact of this rule will be negligible because the safety zone is only temporary in nature and the size of the safety zone is small enough to allow mariners to transit on the river without entering the safety zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the area covered by the safety zone created by this rule. The rule will not have a substantial impact on such entities, however, because the safety zone is only temporary in nature and the size of the safety zone is small enough to allow mariners to transit on the river without entering the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 because it only establishes a safety zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T13–060A to read as follows:

165.T13–060A Safety Zone; LST–1166 Safety Zone, Southeastern Tip of Lord Island, Columbia River, Rainier, OR.

(a) *Safety Zone.* The following area is designated a safety zone: The waters of the Columbia River encompassed within a 500 foot radius surrounding the vessel LST–1166 located at position 46°07′18″ N 123°00′51″ W.

(b) *Enforcement Date and Time.* The safety zone established in paragraph (a) will be enforced from 1 p.m. on October 3, 2008 until 8 p.m. on December 15, 2008.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in the safety zone established in paragraph (a) unless authorized by the Captain of the Port, Portland, Oregon, or his designated representatives. Vessels and/or persons granted authorization to enter the safety zone shall obey all lawful orders and directions of the Captain of the Port, Portland, Oregon, or his designated representatives. Vessels and/or persons wishing to request permission to enter the safety zone must contact the Coast Guard representatives on scene with LST–1166 via VHF Channel 16 or by calling 503–240–9311 or the Fred Devine Diving & Salvage Co. escort vessel on VHF Channel 16.

Dated: October 3, 2008.

Russell C. Proctor,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Portland, Oregon.

[FR Doc. E8–25521 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0836–200739(w); FRL–8734–3]

Approval and Promulgation of Implementation Plans; Florida; Removal of Gasoline Vapor Recovery From Southeast Florida Areas; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule published September 16, 2008 (73 FR 53378), approving a revision to the State Implementation Plan (SIP) of the State of Florida. This revision granted the removal of Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in Dade, Broward, and Palm Beach Counties (also referred to as the ''Southeast Florida Area'') and allowed the phase out of Stage II requirements for existing facilities in those counties. In addition, the revision included a SIP amendment to require new and upgraded gasoline dispensing facilities and new bulk gasoline plants statewide to employ Stage I vapor control systems, and required the phase in of Stage I vapor control requirements statewide for existing gasoline dispensing facilities. As stated in the direct final rule, if EPA received an adverse comment by October 16, 2008, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment on September 16, 2008. EPA will address the comment in a subsequent final action based upon the proposed action also published on September 16, 2008. EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9352. Ms. Bradley can also be reached via electronic mail at *bradley.twunjala@epa.gov*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air Pollution control, Incorporation by Reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 14, 2008.

Russell L. Wright,

Acting Regional Administrator, Region 4.

PART 52—[AMENDED]

■ Accordingly, the amendments to 40 CFR 52.520 (which were published in the **Federal Register** on September 16, 2008, at 73 FR 53378) are withdrawn as of October 27, 2008.

[FR Doc. E8–25473 Filed 10–24–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–R08–OW–2007–0153; FRL–8733–4]

Fort Peck Assiniboine and Sioux Tribes in Montana; Underground Injection Control (UIC) Program; Primacy Approval and Minor Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving an application from the Fort Peck Assiniboine and Sioux Tribes in Montana under section 1425 of the Safe Drinking Water Act (SDWA) to implement an underground injection control (UIC) program for Class II (oil and gas-related) injection wells. EPA is also revising regulations that are not specific to the Fort Peck Tribes' application.

DATES: *Effective Dates:* This approval is effective November 26, 2008. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OW–2007–0153. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy in the Ground Water Program, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129. This Docket Facility is open Monday through Friday, between 8 a.m. and 4 p.m., excluding legal holidays. The Docket telephone number is 303–312–6079.

FOR FURTHER INFORMATION CONTACT: Douglas Minter, U.S. Environmental Protection Agency, 8P–W–GW, 1595 Wynkoop Street, Denver, CO 80202–1129. Phone number: 303–312–6079. E-mail address: *minter.douglas@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Category	Examples of potentially regulated entities	North American Industry Classification System
State, Local, and Tribal Governments	State, local, and Tribal governments that own and operate Class II injection wells within the boundaries of the Fort Peck Indian Reservation.	924110
Industry	Private owners and operators of Class II injection wells within the boundaries of the Fort Peck Indian Reservation.	221310
Municipalities	Municipal owners and operators of Class II injection wells within the boundaries of the Fort Peck Indian Reservation.	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction

The Fort Peck Assiniboine and Sioux Tribes of Montana (the ''Fort Peck Tribes'') applied to EPA under sections 1422 and 1425 of the Safe Drinking Water Act (''SDWA''), 42 U.S.C. 300h–1 and 300h–4, for approval of the Fort Peck Tribes' program regulating Class II (oil and gas-related) underground injection wells on the Fort Peck Indian Reservation in Montana. Because the Fort Peck Tribes sought primacy only for the Class II UIC program, EPA is approving their program under SDWA section 1425. EPA's decision is based on a careful and extensive legal and technical review of the Tribes' application. As a result of this review, EPA has determined that the Fort Peck Tribes meet all requirements of section 1451 of the SDWA, including that the Tribes have demonstrated adequate jurisdictional authority over all Class II injection activities on the Reservation, including those conducted by nonmembers. EPA has also determined that the Tribes' program meets all applicable requirements for approval under SDWA section 1425, and that they are capable of administering an effective UIC Class II program in a manner consistent with the terms and purposes of the SDWA and all applicable regulations.

III. Legal Authorities

These regulations are being promulgated under authority of sections 1422, 1425, 1450 and 1451 of the Safe Drinking Water Act, 42 U.S.C. 300h–1, 300h–4, 300j–9 and 300j–11.

A. Requirements for State UIC Programs

Section 1421 of the SDWA requires the Administrator of EPA to promulgate minimum requirements for effective State UIC programs to prevent underground injection activities that endanger underground sources of drinking water (''USDWs''). Sections 1422 and 1425 of the SDWA establish requirements for States seeking EPA approval of State UIC programs.

States that seek approval for UIC programs under section 1422 of the SDWA must demonstrate their UIC program is at least as stringent as the federal minimum requirements. EPA has promulgated a regulation setting forth the applicable procedures and substantive requirements. This regulation has been codified in the *Code of Federal Regulations* (40 CFR part 145). It includes requirements for State permitting programs (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

For States that seek approval under Section 1425 of the SDWA, which provides an alternative set of requirements for Class II programs, EPA has published interim guidance in the **Federal Register** (46 FR 27333–27339, May 19, 1981), describing how States may apply for program approval under section 1425 and setting forth the criteria EPA will use in approving or disapproving applications under this provision. By demonstrating that its program represents an effective program to prevent endangerment of USDWs and meets the more general statutory requirements of section 1421(b)(1)(A) through (D), a State may obtain primacy for a Class II UIC program.

B. Tribal UIC Programs

Section 1451 of the SDWA and 40 CFR 145.52 authorize the Administrator of EPA to treat an Indian Tribe in the same manner as a State for purposes of the UIC program if the Tribe demonstrates that: (1) It is recognized by the Secretary of the Interior; (2) it has a governing body carrying out substantial governmental duties and powers over a defined area; (3) the functions to be exercised by the Tribe are within an area of the Tribal government's jurisdiction; and (4) the Tribe is reasonably expected to be capable, in the EPA Administrator's judgment, of implementing a program consistent with the terms and purposes of the SDWA and applicable regulations.

Under section 1451 of the SDWA and 40 CFR part 145, Subpart E, EPA is authorized to treat Indian Tribes similarly to States and may approve Tribal UIC programs. Tribes may apply for primacy under either or both sections 1422 and 1425 of the SDWA, and the references in 40 CFR part 145 and EPA's May 19, 1981 interim guidance to ''State'' programs are also construed to include eligible ''Tribal'' programs. (See 40 CFR 145.1(h), which provides that all requirements of parts 124, 144, 145, and 146 that apply to States with UIC primacy also apply to

Indian Tribes except where specifically noted.)

IV. Fort Peck Tribes' Application

On December 18, 1995, the Fort Peck Tribes submitted an initial application for primacy for all Class II wells on all lands within the exterior boundaries of the Fort Peck Indian Reservation (the ''Reservation''). This application included comments received during the public comment period and hearing the Tribes held on September 20, 1995. On April 22, 1996, EPA determined that the Fort Peck Tribes' application was complete. On September 12, 1997, EPA published a notice in the **Federal Register** (62 FR 48086–48087) requesting initial comments and scheduling a public hearing on the application. A similar public notice was also published in newspapers in Great Falls, Billings, and Poplar, Montana. A public hearing was held on October 16, 1997, in Poplar, Montana. Public comments received by EPA and the Tribes, and EPA's and the Tribes' responses to these comments, are summarized in the **Federal Register** notice of EPA's proposed approval of the Tribes' application noted under VI. Response to Public Comments. On February 12, 1998, EPA provided a set of formal comments to the Fort Peck Tribes for incorporation into their application. In response, the Fort Peck Tribes submitted a revised application on July 27, 1999, stating that the Fort Peck Tribal Executive Board had formally adopted underground injection control provisions in the Tribal Code and requesting primacy under both Sections 1422 and 1425 of the SDWA. Since this submission, EPA and the Tribes have: (1) Conducted additional analyses which have been incorporated into EPA's Decision Document (see Section V) and the Tribes' application; and (2) updated their Memorandum of Agreement (MOA).

V. Explanation of This Action

After reviewing the very few public comments received on its January 30, 2008, proposal, EPA is approving the Fort Peck Tribes' Class II UIC program under SDWA Section 1425 with minor revisions to the Tribes' Program Description (PD) in their application. As a result, the Fort Peck Tribes will assume primary enforcement authority (except for the authority that EPA will retain to take criminal actions: (1) Against non-Indians; and (2) against Indians where the potential fine required is greater than $5,000 or where the penalty will require imprisonment for more than one year, in accordance with 25 U.S.C. 1302) for regulating all Class II injection activities on all lands within the exterior boundaries of the Reservation.

EPA's Decision Document in support of EPA's approval is part of the public record and is available for public review. The Decision Document includes findings that the Fort Peck Tribes meet all requirements of section 1451 of the SDWA, including that the Tribes have demonstrated adequate jurisdictional authority over all Class II injection activities on the Reservation, including those conducted by nonmembers, and that the Fort Peck Tribes' program meets all applicable requirements for approval under section 1425 of the SDWA.

The Fort Peck Tribes will administer and enforce their Class II program with respect to all Class II injection wells on the Reservation. EPA is amending 40 CFR part 147 to revise the reference to the EPA-administered program for Class II injection wells on the Reservation to refer to the Fort Peck Tribes' Class II program. EPA will continue to administer its UIC program for Class I, III, IV, and V wells on the Reservation. (Although the Tribal Code prohibits injection in Class I, III, and IV wells, these prohibitions are separate from the Class II program that EPA is approving in this action.) As noted above, EPA will also retain Class II-related criminal enforcement authority against non-Indians on the Reservation, and against Indians on the Reservation where the potential fine required is greater than $5,000 or where the penalty will require imprisonment for more than one year.

EPA will oversee the Fort Peck Tribes' administration of the Class II program on the Reservation. Part of EPA's oversight responsibility will include requiring quarterly reports of non-compliance and annual UIC program performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between EPA and the Fort Peck Tribes requires, among other things, that EPA review all permits associated with aquifer exemptions not previously approved by EPA.

The provisions of the Tribal Code that contain standards, requirements, and procedures applicable to owners or operators of Class II wells on the Reservation are being incorporated by reference into 40 CFR part 147. Any provisions incorporated by reference, as well as all Tribal permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA and 40 CFR 147.1(e).

Cross Media Electronic Reporting Rule

EPA was recently made aware that its analysis of the Fort Peck Tribes' program with respect to 40 CFR 145.11 in its proposed Decision Document for this action did not include a discussion of the Tribal program's consistency with 40 CFR 145.11(a)(33). 40 CFR 145.11(a)(33) requires that State programs under that part that ''wish to receive electronic documents'' have legal authority to implement 40 CFR Part 3, the Cross Media Electronic Reporting Rule (CROMERR) (see 70 FR 59879, October 13, 2005). CROMERR includes requirements applicable to States, Tribes, and local governments administering or seeking to administer authorized programs under Title 40 of the CFR where such programs receive electronic documents in lieu of paper to satisfy requirements under such programs. EPA has consulted with the Fort Peck Tribes and determined that the Tribes' UIC Program does not accept electronic copies of official documents or records, and therefore has concluded that the Tribes' program is consistent with 40 CFR 145.11(a)(33).

VI. Response to Public Comments

EPA published its proposal to approve the Fort Peck Tribes' application in the **Federal Register** on January 30, 2008. As part of its proposal, EPA requested public comment and announced that a public hearing would be held on February 25, 2008. The public comments received, and EPA's responses to them, are summarized below.

Comment: One Class II injection well owner/operator objected to Tribal regulation of non-tribally owned and operated wells located on fee land within the Reservation.

Response: EPA carefully considered the Tribes' application under the statutory and regulatory framework set out in the SDWA and at 40 CFR 145.52 and concluded that the Tribes have demonstrated adequate jurisdictional authority over all Class II injection well activities within the exterior boundaries of the Reservation, including those conducted by non-Tribal members on fee lands. Detailed findings that form the basis of this conclusion are included under Section VIII. Generalized Findings and in EPA's Decision Document supporting EPA's approval of the Tribes' application, which is available for public review.

Comment: This commenter also expressed concern that Tribal regulation of its Class II injection well would enable the Tribes to require that: (1) Only Tribal members be hired to operate

and maintain this well; and (2) tribal employment-related monetary payments be made to the Tribes. This commenter stated that if the Tribes did regulate their Class II injection well, EPA should explicitly state in its authorization that Tribal employment or related monetary payments will not become a condition in the UIC permit.

Response: This comment raises issues that are outside the scope of EPA's action approving the Tribes' program. Employment rights and authority to require monetary payments related to employment are outside the scope of EPA's Federal UIC program.

Comment: The Tribes described how their Office of Environmental Protection (OEP) has further enhanced its technical and administrative expertise and gained additional experience in assuming responsibility for Class II injection well program implementation since the original application was submitted. The Tribes also requested that the following sections of the Program Description (PD) in their application be updated: (1) OEP's two year projected budget for implementing its Class II injection well program; and (2) OEP's organizational chart.

Response: These two sections of the Tribes' PD have been updated. In addition, EPA noted in its January 30, 2008, proposal that the Tribes' original request for an aquifer exemption for the Dakota Sand formation did not reflect the Tribes' current intent, since the Tribes have subsequently decided not to pursue this exemption at this time. Consequently, reference to the Tribes' original request has been deleted from the PD.

Comment: The Bureau of Land Management (BLM) expressed its desire to develop a Memorandum of Understanding (MOU) with the Tribes for purposes of Class II injection well program implementation. Specifically, the BLM stated that it would like to encourage the Tribes to enter into a MOU with the BLM to delineate its trust responsibilities for Class II injection wells and ensure protection of tribal or allotted mineral resources on the Reservation. The BLM cited similar MOUs currently in place with EPA's and Montana's Class II injection well programs.

Response: EPA fully supports the development of a new MOU between the Tribes and the BLM, and has communicated to both parties that it is willing to assist in the development of this document.

VII. Other Changes to UIC Regulations

This rule includes the following revisions to 40 CFR 147.1 that are not specific to the Fort Peck Tribes: (1) Revising 40 CFR 147.1 to include specific references to Tribal programs in light of the fact that EPA is approving its first Tribal UIC program; and (2) reserving 40 CFR 147.1(f), because it duplicates 40 CFR 9.1. EPA's regulations are codifying these minor revisions to account for the fact that such programs may be run by Tribes.

VIII. Generalized Findings

As described earlier, EPA's decision to approve the Fort Peck Tribes to implement a Class II UIC program includes findings that the Tribes meet all requirements of section 1451 of the SDWA, including that the Tribes have demonstrated adequate jurisdictional authority over all Class II injection activities on the Reservation, including those conducted by nonmembers. With regard to authority over nonmember activities on nonmember-owned fee lands, EPA finds that the Tribes have demonstrated such authority under the test established by the United States Supreme Court in *Montana* v. *United States*, 450 U.S. 544 (1981) (*Montana* test). Under the *Montana* test, the Supreme Court held that absent a Federal grant of authority, Tribes generally lack inherent jurisdiction over the activities of nonmembers on nonmember-owned fee lands. However, the Court also found that Indian Tribes retain inherent sovereign power to exercise civil jurisdiction over nonmember activities on nonmember-owned fee lands within the reservation where: (1) Nonmembers enter into ''consensual relationships with the Tribe or its members, through commercial dealing, contracts, leases, or other arrangements'' or (2) ''* * * [nonmember] conduct threatens or has some direct effect on the political integrity, the economic security or the health or welfare of the Tribe.'' *Id.* at 565–66. In analyzing Tribal assertions of inherent authority over nonmember activities on Indian reservations, the Supreme Court has reiterated that the *Montana* test remains the relevant standard. See e.g., *Strate* v. *A–1 Contractors*, 520 U.S. 438, 445 (1997) (describing *Montana* as ''the pathmarking case concerning Tribal civil authority over nonmembers''); *Nevada* v. *Hicks*, 533 U.S. 353, 358 (2001) (''Indian Tribes' regulatory authority over nonmembers is governed by the principles set forth in [*Montana*]''); *Plains Commerce Bank* v. *Long Family Land & Cattle Co., Inc.,* 128 S.Ct. 2709 (2008).

As part of the public record available for review, EPA's Decision Document, and Appendix A thereto, sets forth the Agency's specific factual findings relating to the Tribes' demonstration of inherent authority over the UIC Class II activities of nonmembers under the *Montana* test and, in particular, the potential for direct effects of nonmember UIC activities on the Tribes' health, welfare, political integrity, and economic security that are serious and substantial. In addition, EPA is publishing the general findings set forth below regarding the effects of underground injection activities. These general findings provide a backdrop for EPA's analysis of the Tribes' assertion of authority under the *Montana* test and, in effect, supplement the Agency's factual findings specific to the Fort Peck Tribes and to the Fort Peck Reservation.

A. General Finding on Human Health and Welfare, and Economic and Political Impacts

In enacting part C of the SDWA, Congress generally recognized that if left unregulated or improperly managed, underground injection can endanger drinking water sources and thus has the potential to cause serious and substantial, harmful impacts on human health and welfare, and economic and political interests. As stated in the legislative history of the SDWA:

> [U]nderground injection of contaminants is clearly an increasing problem. Municipalities are increasingly engaging in underground injection of sewage, sludge, and other wastes. Industries are injecting chemicals, byproducts, and wastes. Energy production companies are using injection techniques to increase production and to dispose of unwanted brines brought to the surface during production. Even government agencies, including the military, are getting rid of difficult to manage waste problems by underground disposal methods. Part C is intended to deal with all of the foregoing situations insofar as they may endanger USDWs.[1]

In response to the problem of the substantial risks inherent in underground injection activities, Congress enacted section 1421 of the SDWA ''to assure that drinking water sources, actual and potential, are not rendered unfit for such use by underground injection of contaminants.''[2]

In enacting the SDWA, Congress also generally found that waste disposal practices, including mismanaged underground injection activities, could have serious and substantial, harmful impacts on human health and welfare,

[1] *See* H.R. Report No. 93–1185, 93rd Congress, 2nd Session (1974), *reprinted in* ''A Legislative History of the Safe Drinking Water Act,'' February, 1982, by the Government Printing Office, Serial No. 97–9, page 561.

[2] Id., page 560.

and economic and political interests. For example, Congress found that:

> Federal air and water pollution control legislation have increased the pressure to dispose of waste materials on or below land, frequently in ways, such as subsurface injection, which endanger drinking water quality. Moreover, the national economy may be expected to be harmed by unhealthy drinking water and the illnesses which may result therefrom.[3]

Congress specifically noted several economic and political consequences that can result from the degradation of good quality drinking water supplies, including: (1) Inhibition of interstate tourism and travel; (2) loss of economic productivity because of absence from employment due to illness; (3) limited ability of a town or region to attract workers; and (4) impaired economic growth of a town or region, and, ultimately, the nation.[4]

As the Agency charged by Congress with implementing part C of the SDWA and assuring implementation of effective UIC programs throughout the United States, EPA agrees with these Congressional findings. EPA finds that underground injection activities, if not effectively regulated, can have serious and substantial, harmful impacts on human health and welfare, and economic and political interests. In making this finding, EPA recognizes that: (1) The underground injection activities, currently regulated as five distinct classes of injection wells as defined in the UIC regulations, typically emplace a variety of potentially harmful organic and inorganic contaminants (e.g., brines and hazardous wastes) into the ground; (2) these injected contaminants have the potential to enter USDWs through a variety of migratory pathways if injection wells are not properly managed; and (3) once present in USDWs, these injected contaminants can have harmful impacts on human health and welfare, and economic and political interests, that are both serious and substantial.

In 1980, EPA issued a document entitled, ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' which provides the rationale for the Agency in proposing specific regulatory controls for a variety of underground injection activities. These controls, or technical requirements (e.g., testing to ensure the mechanical integrity of an injection well), were promulgated to prevent release of pollutants through the six primary ''pathways of contamination,'' or well-established and recognized ''ways in which fluids can escape the well or injection horizon and enter USDWs.'' [5] EPA has found that USDW contamination from one or more of these pathways can occur from underground injection activity of all classes (I–V) of injection wells.

The six pathways are:

1. Migration of fluids through a leak in the casing of an injection well and directly into a USDW;
2. Vertical migration of fluids through improperly abandoned and improperly completed wells in the vicinity of injection well operations;
3. Direct injection of fluids into or above a USDW;
4. Upward migration of fluids through the annulus, which is the space located between the injection well's casing and the well bore. This can occur if there is sufficient injection pressure to push such fluid into an overlying USDW;
5. Migration of fluids from an injection zone through the confining strata over or underlying a USDW. This can occur if there is sufficient injection pressure to push fluid through a stratum, which is either fractured or permeable, and into the adjacent USDW; and
6. Lateral migration of fluids from within an injection zone into a portion of that stratum considered to be a USDW. In this scenario, there may be no impermeable layer or other barrier to prevent migration of such fluids.[6]

Moreover, consistent with EPA's findings, the U.S. Department of the Interior has recognized the ability of injection wells to contaminate surface waters that are hydrogeologically connected to contaminated ground water.[7] Such contamination of surface waters could further cause negative impacts on human health and welfare, and economic and political interests.

In sum, EPA finds that, given the common presence of contaminants in injected fluids, serious and substantial contamination of ground water and surface water resources can result from improperly regulated underground injection activities. Moreover, such contamination has the potential to cause correspondingly serious and substantial harm to human health and welfare, and economic and political interests. EPA also has determined that Congress reached a similar finding when it enacted part C of the SDWA, directing EPA to establish UIC programs to mitigate and prevent such harm through the proper regulation of underground injection activities.

B. General Finding on the Protection of Safe Drinking Water Sources as Necessary To Protect Self-Government

Consistent with the finding that improperly managed underground injection activities can have direct harmful effects on human health and welfare, and economic and political interests that are serious and substantial, EPA has determined that proper management of such activities serves the purpose of protecting these human health and welfare, and economic and political interests. Protection of these interests is a core governmental function, the exercise of which is integral to, and is a necessary aspect of, self-government. See 56 FR 64876, 64879 (December 12, 1991); *Montana* v. *EPA*, 137 F.3d 1135, 1140–41 (9th Cir. 1998). EPA has determined that Congress reached this conclusion in enacting the SDWA, and that Congress considered the water quality protection functions authorized by the SDWA to be a necessary act of self government, serving to protect essential and vital public interests by ensuring that the public's essential drinking water sources are safe from contamination, including contamination caused by underground injection activities.

The above findings regarding the effects on human health and welfare, and economic and political interests are generally true for human beings and their communities, wherever they may be located. EPA has determined that the above findings are generally true for any Federal, State and/or Tribal government having responsibility for protecting human health and welfare. With specific relevance to Tribes, EPA has long noted the relationship between proper environmental management within Indian country and Tribal self-government and self-sufficiency. Moreover, in the 1984 *EPA Policy for the Administration of Environmental Programs on Indian Reservations,* EPA determined that as part of the ''principle of Indian self-government,'' Tribal governments are the ''appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace,'' consistent with Agency standards and regulations. (*EPA Policy for the Administration of Environmental Programs on Indian Reservations,* Paragraph 2, November 8, 1984). EPA

[3] Id., page 540.

[4] Id., page 540.

[5] ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' EPA, (May, 1980), page 7.

[6] ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' EPA, (May, 1980), pp. 7–17.

[7] *See* Federal Water Quality Administration's Order COM 5040.10 (1970), *as referred to in* H.R. Report No. 93–1185, 561.

interprets section 1451 of the SDWA, in providing for the approval of Tribal programs under the Act, as authorizing eligible Tribes to assume a primary role in protecting drinking water sources. These general findings provide a backdrop for EPA's legal analysis of the Fort Peck Tribes' Application and, in effect, supplement EPA's factual findings specific to the Fort Peck Tribes and to the Fort Peck Reservation, contained in the Decision Document and Appendix A thereto, and the Fort Peck Tribes' similar conclusions, contained in their Application, pertaining specifically to the Fort Peck Tribes and the Fort Peck Reservation.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Reporting or recordkeeping requirements will be based on the Tribal Code, and the Fort Peck Tribes are not subject to the Paperwork Reduction Act. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR sections 144–148) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0042. The OMB control numbers for EPA's regulations in 40 CFR are listed in part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in crude petroleum and natural gas extraction as defined by NAICS Code 211111 according to Small Business Administration size standards for entities employing fewer than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are owners or operators of Class II wells, employing fewer than 500 employees. We have determined that less than 7 small entities will experience an impact of greater than 1 percent of annual revenues. These entities will be subject to requirements substantially similar to the existing requirements of EPA's program under 40 CFR 147.1351(a) and will not incur significant new costs as a result of this rule. For example, the Tribes will charge an annual $200 permitting fee for each Class II well on the Reservation. While this will impose a new cost on a small entity, this cost will not have a significant economic impact on a substantial number of small entities due to the few small entities owning/operating the 23 Class II wells on the Reservation. Moreover, in approving State UIC programs imposing similar fees on a greater number of small entities, EPA determined that these new costs did not have a significant economic impact on a substantial number of small entities.

Although this rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. The Fort Peck Tribes' program is more stringent than the existing Federal program in certain respects. For example, unlike the existing Federal program, the Fort Peck Tribes' program requires permits for all Class II wells, with no provision for authorization by rule. (See section 202(c) of the Tribal Code.) However, because all Class II wells now in operation on the Reservation currently hold EPA permits, this more stringent requirement will not impose a significant economic impact on the owners or operators of these wells. Other requirements in the Fort Peck Tribes' program that are more stringent than the existing Federal program are identified in the Decision Document available for public review and are mostly minor observation, recording, and reporting requirements. These requirements also will not impose a significant economic effect on the owners or operators of these wells.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. EPA's approval of the Fort Peck Tribes' program will not constitute a ''Federal mandate'' because there is no requirement that Tribes establish UIC regulatory programs and because the program is a Tribal, rather than a Federal program. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. In developing this rule, EPA consulted with small governments under a plan developed pursuant to section 203 of UMRA concerning the regulatory requirements in the rule that might significantly or uniquely affect small governments. The only small government directly affected by this rule is the Fort Peck Tribal government. Accordingly, EPA has made the Tribes fully aware of the Federal requirements for approval to administer their own Class II UIC program; enabled the Tribes to have meaningful and timely input in the development of this rule; and informed, educated, and advised the Tribes on compliance with these requirements. However, the Tribal government is only implementing and complying with these regulatory requirements because it has: (1) Voluntarily requested EPA approval to administer their own Class II UIC program; and (2) voluntarily assumed the Tribal share of the costs for doing so.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State

and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule will merely put in place a Tribal regulatory program that is identical in many respects to the existing Federal program and more stringent in certain respects, as explained in more detail in the Decision Document. EPA will continue to administer its Class I, III, IV, and V UIC programs on the Reservation. Authorizing the Fort Peck Tribes to administer the Class II program will not substantially alter the distribution of power and responsibilities among levels of government or significantly change EPA's relationship with Montana. The substitution of a Tribal Class II program in place of an EPA-administered Class II program on the Fort Peck Reservation will impose no additional costs on the State of Montana. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 6, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action will have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. The Fort Peck Tribes have voluntarily requested EPA approval to administer their own Class II UIC program and have voluntarily assumed the Tribal share of the costs for doing so.

EPA consulted with tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA has made the Tribes fully aware of the Federal requirements for approval to administer their own Class II UIC program; enabled the Tribes to have meaningful and timely input in the development of this rule; and informed, educated, and advised the Tribes on compliance with these requirements. (See sections IV, V, and VI for more information.)

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it approves a tribal primary enforcement (primacy) program. The Fort Peck Tribes' Class II UIC program is more stringent than the existing Federal program; the Tribal program requirements have been established to prevent underground injection activities that endanger USDWs. The Fort Peck Tribal Executive Board has formally adopted underground injection control provisions in the Tribal Code in their program to safeguard these resources for all potential users, including but not limited to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule will put in place a Tribal regulatory program that is more stringent than the Federal program and, therefore, will increase the level of protection. For example, unlike the existing Federal program, the Fort Peck Tribes' program requires permits for all Class II wells, with no provision for authorization by rule. Moreover, in approving the Tribes' own Class II program, EPA is enhancing the Tribes' ability to determine its own UIC affairs on its Reservation.

K. Congressional Review Act

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

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 26, 2008.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Incorporation by reference.

Dated: October 17, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, Title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

■ 1. The authority citation for part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h *et seq.*; and 42 U.S.C. 6901 *et seq.*

■ 2. Part 147 heading is revised as set forth above.

Subpart A—[AMENDED]

■ 3. Section 147.1 is revised to read as follows:

§ 147.1 Purpose and scope.

(a) This part sets forth the applicable Underground Injection Control (UIC) programs for each of the States, territories, and possessions identified pursuant to the Safe Drinking Water Act (SDWA) as needing a UIC program, including any Indian country geographically located within those States, territories, and possessions.

(b) The applicable UIC programs set forth in this part may be State-administered programs approved by EPA, Tribally-administered programs approved by EPA, or Federally-administered programs promulgated by EPA. In some cases, the applicable UIC program for a particular area may consist of a State-administered or Tribally-administered program applicable to some classes of wells and a Federally-administered program applicable to other classes of wells. Approval of a State or Tribal program is based upon a determination by the Administrator that the program meets the requirements of section 1422 or section 1425 of the SDWA, any other applicable provisions of this subpart, and the applicable provisions of 40 CFR parts 124, 144, 145 and 146. A Federally-administered program is promulgated in those instances where the State or Tribe has not submitted any program for approval or where the submitted program does not meet the minimum Federal statutory and regulatory requirements.

(c) In the case of each State or Tribal program approved by EPA pursuant to section 1422 of the SDWA, the relevant subpart describes the major elements of that program, including the relevant State or Tribal statutes and regulations, the Statement(s) of Legal Authority, the Memorandum of Agreement, and the Program Description. State or Tribal statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators have been incorporated by reference pursuant to regulations of the Office of the Federal Register. Material incorporated by reference is available for inspection in the appropriate EPA Regional office, in EPA Headquarters, and 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.* Other State or Tribal statutes and regulations containing standards and procedures that constitute elements of a State or Tribal program but do not apply directly to owners or operators have been listed but have not been incorporated by reference.

(d) In the case of any program promulgated under section 1422 for a State or Tribe that is to be administered by EPA, the relevant State or Tribal subpart makes applicable the provisions of 40 CFR parts 124, 144, 146, and 148, and any other additional requirements pertinent to the specific State or Tribal program.

(e) Regulatory provisions incorporated by reference (in the case of approved State or Tribal programs) or promulgated by EPA (in the case of EPA-administered programs), and all permit conditions or permit denials issued pursuant to such regulations, are enforceable by the Administrator pursuant to section 1423 of the SDWA.

(f) [Reserved].

Subpart BB—[Amended]

■ 4. Section 147.1351 is amended by revising the first sentence of paragraph (a) and by revising paragraph (b) to read as follows:

§ 147.1351 EPA-administered program.

(a) *Contents.* The UIC program in the State of Montana for Class I, III, IV, and V wells, and for all Classes of wells in Indian country in Montana, except for Class II wells on all lands within the exterior boundaries of the Fort Peck Indian Reservation, is administered by EPA. * * *

(b) *Effective dates.* The effective date for the UIC program for Class I, III, IV, and V wells for all lands in Montana, including all Indian country in Montana, and for Class II wells for all Indian country in Montana other than the Fort Peck Indian Reservation, is June 25, 1984. The effective date for the EPA-approved State-administered UIC Class II program for all lands in Montana, except for those in Indian country, is provided in § 147.1350.

■ 5. Subpart JJJ is added to read as follows:

Subpart JJJ—Assiniboine and Sioux Tribes

§ 147.3200 Fort Peck Indian Reservation: Assiniboine & Sioux Tribes—Class II wells.

The UIC program for Class II injection wells on all lands within the exterior boundaries of the Fort Peck Indian Reservation is the program administered by the Assiniboine and Sioux (Fort Peck) Tribes approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on October 27, 2008; the effective date of this program is November 26, 2008. This program consists of the following elements as submitted to EPA in the Fort Peck Tribes' program application:

(a) *Incorporation by Reference.* The requirements set forth in the Fort Peck Tribes' Statutes, Regulations, and Resolutions notebook, dated June 2008, are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the Fort Peck Indian Reservation. This 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 may be obtained or inspected at the Fort Peck Tribal Offices, 605 Indian Avenue, Poplar, Montana 59255, (406) 768–5155, at the Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (800) 227–8917, 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) *Memorandum of Agreement (MOA).* The MOA between EPA and the Fort Peck Tribes signed by EPA on July 31, 2007.

(c) *Statements of legal authority.* Letters to EPA from Sonosky, Chambers, Sachse, Endreson & Perry, dated

September 4, 2003 (attaching a June 17, 2002 letter), March 27, 2001, July 19, 1999, March 13, 1995, March 16, 1994, November 4, 1992, July 14, 1989, and April 13, 1989, and letters submitted as part of the Fort Peck Tribes' application.

(d) *Program Description*. The Program Description submitted as part of the Fort Peck Tribes' application, and any other materials submitted as part of the application or as a supplement to it.

[FR Doc. E8–25317 Filed 10–24–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator of the Mitigation Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified
City of Richmond, Virginia FEMA Docket No.: B–7768				
Virginia	City of Richmond	Bacons Quarter Branch	Approximately at the confluence with Shockoe Creek.	+67
			Approximately 1,400 feet upstream of Hermitage road.	+184
Virginia	City of Richmond	Battery Park Ponding Area	Approximately 2,250 feet south of Overbrook Road.	+136
			Approximately 850 feet north of Overbrook Road.	+139
Virginia	City of Richmond	Cannons Creek Branch	Approximately at the confluence with Bacons Quarter Branch.	+74
			Approximately 200 feet downstream of Vale Street.	+96
Virginia	City of Richmond	Jordans Branch	Approximately 35 feet north of Route 64 near the Henrico County line.	+164

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified
			Approximately 120 feet north of Route 64 near the Henrico County line.	+164
Virginia	City of Richmond	Pocoshock	Approximately at the Chesterfield County line.	+133
			Approximately at the confluence with Pocosham Creek.	+133
Virginia	City of Richmond	Shockoe Creek	Approximately at East Franklin Street	+23
			Approximately 2,700 feet upstream of Magnolia Street.	+129

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Richmond
Maps are available for inspection at City Hall, 900 East Broad Street, Room 600, Richmond, VA 23219.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Monterey County, California and Incorporated Areas Docket No.: FEMA–B–7763			
Calera Creek	At the confluence with El Toro Creek	+236	Unincorporated Areas of Monterey County.
	Approximately 1.2 miles upstream of Robley Road	+469	
	Approximately 500 feet west of the intersection of Robley Road and Corral de Tierra.	#1	
Carmel River	Approximately 370 feet above the mouth of the river	+16	Unincorporated Areas of Monterey County.
	Approximately 170 feet downstream of San Clemente Dam	+470	
Carmel River Garland Ranch Overbank.	At the convergence with Carmel River main channel	+180	Unincorporated Areas of Monterey County.
	At the divergence from Carmel River main channel	+194	
Carmel River Hacienda Overbank.	At the convergence with Carmel River main channel	+49	Unincorporated Areas of Monterey County.
	At the divergence from Carmel River main channel	+59	
Carmel River North Highway 1 Overbank.	Approximately 600 feet downstream of State Highway 1	+25	Unincorporated Areas of Monterey County, City of Carmel By The Sea.
	At the divergence from Carmel River main channel	+39	
Carmel River Schulte Overbank.	At the convergence with Carmel River main channel	+90	Unincorporated Areas of Monterey County.
	At the divergence from Carmel River main channel	+102	
Carmel River South Highway 1 Overbank.	Approximately 1,100 feet upstream of confluence with Carmel River main channel.	+16	Unincorporated Areas of Monterey County.
	Approximately 500 feet downstream of divergence from Carmel River main channel.	+38	
El Toro Creek	Approximately 650 feet downstream of Highway 68	+222	Unincorporated Areas of Monterey County.
	Approximately 300 feet upstream of Highway 68	+236	
Harper Creek	At the confluence with San Benancio Gulch	+371	Unincorporated Areas of Monterey County.
	Approximately 0.6 mile upstream of Rimrock Canyon Road	+605	
Pacific Ocean	Approximately 400 feet north of the intersection of Camino Aguajito and Del Monte Avenue.	+22	Unincorporated Areas of Monterey County, City of Monterey.
San Benancio Gulch	At the confluence with El Toro Creek	+236	Unincorporated Areas of Monterey County.
	Approximately 0.7 mile upstream of Ridge Back Road	+839	
Watson Creek	At the confluence with Calera Creek	+408	Unincorporated Areas of Monterey County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
	Approximately 1.1 miles upstream of Calle Viejo	+886	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Carmel by the Sea

Maps are available for inspection at Carmel-by-the-Sea City Hall, East Side of Monte Verde between Ocean and 7th Avenues, Carmel-by-the-Sea, California.

City of Monterey

Maps are available for inspection at City of Monterey Building and Safety Division, 580 Pacific Street, Monterey, California.

Unincorporated Areas of Monterey County

Maps are available for inspection at Monterey County Water Resources Agency, 893 Blanco Circle, Salinas, California.

Jersey County, Illinois, and Incorporated Areas
FEMA Docket No.: B–7769

Elsah Creek	At the mouth of the Mississippi River	+438	Village of Elsah.
	Approximately 500 feet upstream of Maple Street	+438	
Illinois River	At the mouth of the Mississippi River in Jersey County	+439	Unincorporated Areas of Jersey County, City of Grafton.
	Approximately 1,500 feet upstream of the Illinois River Road Ferry Crossing.	+439	
Mississippi River	Approximately 0.5 miles downstream of the confluence of Piasa Creek.	+437	Unincorporated Areas of Jersey County, City of Grafton, Village of Elsah.
	At river mile 223.1 at the downstream tip of Iowa Island	+440	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Grafton

Maps are available for inspection at Grafton City Hall, 118 East Main Street, Grafton, IL 62037.

Unincorporated Areas of Jersey County

Maps are available for inspection at Jersey County Government Building, 200 North Lafayette St., Jerseyville, IL 62052.

Village of Elsah

Maps are available for inspection at 51 North Street, P.O. Box 28, Elsah, IL 62028.

Lincoln Parish, Louisiana, and Incorporated Areas
FEMA Docket No.: B–7726

Choudrant Creek	Confluence with Choudrant Creek Trib. 3	+136	Unincorporated Areas of Lincoln Parish.
	Approximately 1,550 feet from upstream of confluence with Choudrant Creek Trib. 6.	+185	
Choudrant Creek Tributary 6	Confluence with Choudrant Creek	+185	Unincorporated Areas of Lincoln Parish.
	Approximately 1,250 feet upstream of confluence with Choudrant Creek Trib. 6.1.	+215	
Colvin Creek	Confluence with Cypress Creek	+120	Unincorporated Areas of Lincoln Parish, Town of Vienna.
	Approximately 2,080 feet upstream of confluence with Colvin Creek Tributary 3.	+182	
Colvin Creek Tributary 2	Confluence with Colvin Creek	+167	Unincorporated Areas of Lincoln Parish.
	Approximately 905 feet upstream of Frazier Road	+188	
Cypress Creek	Confluence with Cypress Creek Tributary 8	+161	Unincorporated Areas of Lincoln Parish, Town of Vienna.
	Confluence with Cypress Creek Tributary 15	+206	
Madden Creek Tributary 5	Approximately 320 Feet Upstream of 2nd Street	+286	Village of Simsboro.
	Confluence with Madden Creek	+301	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Redwine Creek	Approximately 4,410 feet upstream of Facilities/Agriculture Drive.	+231	Village of Grambling, Unincorporated Areas of Lincoln Parish.
	Confluence with Redwine Creek Tributary 6	+286	
Redwine Creek Tributary 6	Confluence with Redwine Creek	+286	Village of Grambling.
	Approximately 1,100 feet upstream of Cornwell Dr	+311	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Vienna

Maps are available for inspection at 5168 Highway 167, Ruston, LA 71270.

Lincoln Parish (Unincorporated Areas)

Maps are available for inspection at 100 West Texas Avenue, Ruston, LA 71270.

Village of Grambling

Maps are available for inspection at 2045 Martin Luther King Jr. Ave., Grambling, LA 71245.

Village of Simsboro

Maps are available for inspection at 2742 Martha St., Simsboro, LA 71275.

Grand County, Utah, and Incorporated Areas
FEMA Docket No.: B–7721

Pack Creek	At the confluence with Mill Creek 160 feet upstream of Mill Creek.	+4030	Unincorporated Areas of Grand County City of Moab.
	160 feet upstream of Mill Creek Drive	+4199	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Moab

Maps are available for inspection at 217 East Center Street, Moab, UT 84532.

Grand County (Unincorporated Areas)

Maps are available for inspection at Grand County Courthouse, Moab, UT 84532.

Washington County, Utah, and Incorporated Areas
FEMA Docket No.: B–7735

Ash Creek	Just upstream of the confluence with Virgin River	+3001	City of Toquerville, City of Laverkin.
	Approximately 2,682 feet upstream of State Street	+3425	
Cottonwood Spring Wash	Just upstream of the confluence with Shoal Creek	+5309	Unincorporated Areas of Washington County, City of Enterprise.
	Approximately 16 feet downstream of SR–18	+5369	
Cottowood Wash	Just upstream of the confluence with Grapevine Pass Wash.	+2681	City of Washington.
	Approximately 361 feet downstream of State Street	+3086	
Coyote Wash	Approximately 105 feet upstream of Kayenta Dr	+2976	Unincorporated Areas of Washington County, Town of Ivins.
	Just upstream of the confluence with Santa Clara River	+3388	
Fort Pierce Wash	At River Road	+2616	Unincorporated Areas of Washington County, City of St. George.
	Approximately 6.3 miles upstream of River Road	+2772	
Gould Wash	Just upstream of the confluence with Virgin River	+2898	Unincorporated Areas of Washington County, City of Hurricane.
	Approximately 2,024 feet upstream of 180 West Street	+3290	
Grapevine Pass Wash	Just upstream of the confluence with Virgin River	+2641	City of Washington.
	Approximately 3,165 feet downstream of I–15	+2962	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Kayenta Wash	Just upstream of the confluence with Santa Clara River	+2962	Unincorporated Areas of Washington County, Town of Ivins.
	Approximately 21 feet downstream of Taviawk Drive	+3237	
Lava Flow Wash	Just upstream of the confluence with Tuacahn Wash	+2848	City of Santa Clara.
	Approximately 1,100 feet upstream of Rachel Dr	+2918	
Middleton Wash	Just upstream of the confluence with Virgin River	+2583	City of St. George.
	Approximately 3,155 feet upstream of I–15	+2910	
Mill Creek	Just upstream of the confluence with Virgin River	+2629	City of Washington, City of St. George.
	Approximately 3,622 feet upstream of Buena Vista Boulevard.	+2866	
North Fork Virgin River	Just upstream of the confluence with East Fork Virgin River	+3774	Town of Springdale.
	Approximately 3.75 miles upstream of the confluence with East Fork Virgin River.	+3921	
Sand Hollow Wash	At the confluence of Halfway Wash	+2690	City of Santa Clara, City of St. George.
	Approximately 2,449 feet upstream of Tuacahn Parkway	+2956	
Santa Clara River	Just upstream of the confluence with Virgin River	+2538	Unincorporated Areas of Washington County, City of Santa Clara, City of St. George.
	Approximately 1.2 miles upstream of Summerwood Circle	+2785	
Shoal Creek	Approximately 2,893 feet upstream of Center Street	+5308	Unincorporated Areas of Washington County, City of Enterprise.
	Approximately 1,838 feet downstream of Center Street	+5321	
Spring Creek	Just upstream of the confluence with Shoal Creek	+5321	Unincorporated Areas of Washington County, City of Enterprise.
	Approximately 2,314 feet upstream 100 S ST	+5346	
Tuacahn Wash	Approximately 492 feet downstream of Little League Drive	+2782	City of Santa Clara, Town of Ivins.
	Approximately 1,765 feet upstream of Tuacahn Drive	+3078	
Unnamed Wash 1 to Cottonwood Wash.	Just upstream of the confluence with Cottonwood Wash	+2930	City of Washington.
	310 feet downstream of State Street	+3074	
Virgin River	Approximately 3,303 feet dowstream of confluence with Big Valley Wash.	+2467	Unincorporated Areas of Washington County, City of St. George, City of Washington.
	Approximately 1.78 miles upstream of the confluence with Grapevine Pass Wash.	+2664	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Enterprise

Maps are available for inspection at 375 S 300 E, Enterprise, UT 84725.

City of Hurricane

Maps are available for inspection at 147 N 870 W, Hurricane, UT 84737.

City of Laverkin

Maps are available for inspection at 435 N Main, Laverkin, UT 84745.

City of Santa Clara

Maps are available for inspection at 2721 Santa Clara Dr, Santa Clara, UT 84765.

City of St. George

Maps are available for inspection at 175 E 200 N, St. George, UT 84770.

City of Toquerville

Maps are available for inspection at 212 Toquer Blvd, Toquerville, UT 84774.

City of Washington

Maps are available for inspection at 111 N 100 E, Washington, UT 84780.

Town of Ivins

Maps are available for inspection at 55 N Main, Ivins, UT 84738.

Town of Springdale

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Maps are available for inspection at 197 E Tabernacle St, St. George, UT 84770.			
Unincorporated Areas of Washington County			
Maps are available for inspection at 197 E Tabernacle St, St. George, UT 84770.			
Sheboygan County, Wisconsin, and Incorporated Areas FEMA Docket No.: D–7800			
East Branch Milwaukee River	Just upstream of Division Road	+1012	Unincorporated Areas of Sheboygan County.
	At intersection between Division Road and Scenic Drive	+1012	
Sheboygan River	Approximately 4,700 feet upstream of County Highway JM	+770	Unincorporated Areas of Sheboygan County.
	Approximately 1,500 feet upstream of County Highway A	+798	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Sheboygan County (Unincorporated Areas)

Maps are available for inspection at Administration Building, 508 New York Avenue, Sheboygan, WI 53081–4126.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 16, 2008.

Edward L. Connor,

Acting Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–25257 Filed 10–24–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2275; MB Docket No. 07–124; RM–11378]

Radio Broadcasting Services; Waldport, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Radio Beam, LLC, allots FM Channel 229C2 at Waldport, Oregon, as a second local service. Channel 229C2 can be allotted at Waldport, Oregon, in compliance with the Commission's minimum distance separation requirements without site restriction at the center city reference coordinates: 44–25–37 North Latitude and 124–04–02 West Longitude.

DATES: Effective November 24, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 07–124, adopted October 8, 2008, and released October 10, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Waldport, Channel 229C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–25456 Filed 10–24–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0401120010–4114–02]

RIN 0648–XL40

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for the U.S./Canada Management Area

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

ACTION: Temporary rule; reduction of landing limit.

SUMMARY: This action decreases the Georges Bank (GB) yellowtail flounder trip limit to 2,500 lb (1,134 kg) for NE multispecies days-at-sea (DAS) vessels

fishing in the U.S./Canada Management Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan and is intended to prevent over-harvesting of the total allowable catch (TAC) for GB yellowtail flounder during the 2008 fishing year. This action is being taken to maintain opportunities for vessels to fully harvest the TACs for transboundary stocks of GB cod, haddock, and yellowtail flounder under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective October 23, 2008, through April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2008 fishing year (May 1, 2008 - April 30, 2009) was set at 1,950 mt (73 FR 16572, March 28, 2008), a 217–percent increase from the TAC for the 2007 fishing year.

The regulations at § 648.85(a)(3)(iv)(D) authorize the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) to increase or decrease the trip limits in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation. On April 29, 2008 (73 FR 23130), based upon the 2008 TAC for GB yellowtail flounder and projections of harvest rates in the fishery, the trip limit for GB yellowtail flounder was set at 5,000 lb (2,268 kg) for the 2008 fishing year, to prevent a premature closure of the Eastern U.S./Canada Management Area and, therefore, reduced opportunities to fish for Eastern GB cod and haddock in the Eastern U.S./Canada Area.

According to the most recent Vessel Monitoring System (VMS) reports and other available information, the cumulative GB yellowtail flounder catch, as of October 16, 2008, is estimated to be over 40 percent of the TAC. Harvest of the GB yellowtail flounder TAC would result in the closing of the Eastern U.S./Canada Area, preventing harvest of the remaining portions of the GB cod and GB haddock TACs. Decreasing the GB yellowtail flounder trip limit to 2,500 lb (1,134 kg) from 5,000 lb (2,268 kg) is expected to reduce the number of trips made to the U.S./Canada Management Area to target GB yellowtail flounder, decrease landings of yellowtail flounder without increasing discards, and result in the achievement of the TAC during the fishing year without exceeding it. Based on this information, and at the request of the New England Fishery Management Council (Council), the Regional Administrator is decreasing the current 5,000–lb (2,268–kg) yellowtail flounder trip limit in the U.S./Canada Management Area to 2,500–lb (1,134–kg) per trip, effective 0001 hours local time October 23, 2008, through April 30, 2009.

GB yellowtail flounder landings will continue to be closely monitored. Further inseason adjustments to increase or decrease the trip limit may be considered, based on updated catch data and projections. Should 100 percent of the TAC allocation for GB yellowtail flounder be projected to be harvested, all vessels would be prohibited from harvesting, possessing, or landing yellowtail flounder from the entire U.S./Canada Management Area, and the Eastern U.S./Canada Area would be closed to limited access NE multispecies DAS vessels for the remainder of the fishing year.

Classification

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

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment; as well as the delayed effectiveness for this action, because prior notice and comment, and a delayed effectiveness, would be impracticable and contrary to the public interest. The regulations under § 658.85(a)(3)(iv)(D) grant the Regional Administrator the authority to adjust the GB yellowtail flounder trip limit to prevent over-harvesting or under-harvesting the TAC allocation. This action would reduce the GB yellowtail trip limit for all NE multispecies DAS vessels fishing in the U.S./Canada Management Area for the remainder of the 2008 fishing year. This action is intended to prevent the over-harvest of the GB yellowtail flounder TAC while allowing continued opportunities to achieve optimum yield in the NE multispecies fishery.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D). It is important to take this action immediately to slow the rate of GB yellowtail flounder harvest. Any further delay of this action is likely to result in a precipitous harvest of the GB yellowtail flounder TAC which would require that the Eastern U.S./Canada Management Area be closed for the remainder of the 2008 fishing year, preventing the harvest of the remaining portions of the GB cod and GB haddock TACs, thereby reducing the ability of fishers to maximize their fishing opportunities. Exceeding the 2008 TAC for GB yellowtail flounder would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13, resulting in decreased revenue for the NE multispecies fishery, increased negative economic impacts to vessels operating in the U.S./Canada Area, a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock. Exceeding the 2008 GB yellowtail flounder TAC would also necessitate that any overages during the 2008 fishing year be deducted from the GB yellowtail flounder TAC for the 2009 fishing year. Reducing the 2009 TAC due to any 2008 TAC overage caused by delaying this action would create an unnecessary burden on the fishing industry and further negative economic and social impacts that were not previously considered.

The potential of decreasing the GB yellowtail flounder trip limit was announced to the public when the 5,000–lb (2,268–kg) trip limit was implemented on April 29, 2008. Additional public notice occurred when the Council voted to request that the Regional Administrator reduce the trip limit at its public meeting on October 8, 2008. Further, the public is able to obtain information on the rate of harvest of the GB yellowtail flounder TAC via the NMFS Northeast Regional Office website (*http://www.nero.noaa.gov*), which provides at least some advanced notice of a potential action to prevent the TAC for GB yellowtail flounder from being exceeded during the 2008 fishing year. The Regional Administrator's authority to decrease the trip limit for GB yellowtail flounder in the U.S./Canada Management Area to ensure the shared U.S./Canada stocks of fish are harvested, but not exceeded, was publically considered and open to public comment during the development of Amendment 13 and FW 42. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: October 22, 2008.

Emily H. Menashes,

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

[FR Doc. E8–25593 Filed 10–22–08; 4:40 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 208
Monday, October 27, 2008

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2008–0438]

RIN 3150–AI48

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision 5

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage cask regulations by revising the NAC International, Inc., NAC–UMS Universal Storage System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 5 to Certificate of Compliance (CoC) Number 1015. Amendment No. 5 would modify the CoC to incorporate certain high burnup pressurized water reactor fuel as approved contents and to reflect those changes in the associated Technical Specifications (TS). In addition, the proposed amendment to the CoC would include several other changes to the TS and the Final Safety Analysis Report (FSAR) to enhance the loading and storage operation of the NAC–UMS Universal Storage System.

DATES: Comments on the proposed rule must be received on or before November 26, 2008.

ADDRESSES: Please include the following number RIN 3150–AI48 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission. You may submit comments by any one of the following methods:

E-mail comments to: Federal eRulemaking Portal *http://www.regulations.gov*; search docket ID: [NRC–2008–0438].

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

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone 301–415–1677).

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

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*. An electronic copy of the proposed CoC No. 1015, the proposed TS, and the preliminary safety evaluation report (SER) for Amendment No. 5 can be found under ADAMS Package Number ML081620083.

The proposed CoC No. 1015, the proposed TS, the preliminary SER for Amendment No. 5, and the environmental assessment are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov*.

SUPPLEMENTARY INFORMATION: For additional supplementary information, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 5 to CoC No. 1015 and does not include other aspects of the NAC–UMS design. Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on January 12, 2009. However, if the NRC receives significant adverse comments on the direct final rule by November 26, 2008, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1015 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1015.

Initial Certificate Effective Date: November 20, 2000.

Amendment Number 1 Effective Date: February 20, 2001.

Amendment Number 2 Effective Date: December 31, 2001.

Amendment Number 3 Effective Date: March 31, 2004.

Amendment Number 4 Effective Date: October 11, 2005.

Amendment Number 5 Effective Date: January 12, 2009.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC–UMS Universal Storage System.

Docket Number: 72–1015.

Certificate Expiration Date: November 20, 2020.

Model Number: NAC–UMS.

* * * * *

Dated at Rockville, Maryland, this 7th day of October, 2008.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E8–25539 Filed 10–24–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID: OCC–2008–0016]

RIN 1557–AD18

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1335]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AD34

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. OTS–2008–0014]

RIN 1550–AC24

Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Treatment of Certain Claims on, or Guaranteed by, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: On September 7, 2008, the U.S. Department of Treasury (Treasury) entered into senior preferred stock purchase agreements (the Agreement or Agreements) with the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), which effectively provide protection to the holders of senior debt, subordinated debt, and mortgage-backed securities (MBS) issued or guaranteed by these entities. In light of the financial support provided under the Agreements, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are

proposing to adopt a 10 percent risk weight for claims on, and the portion of claims guaranteed by, Fannie Mae or Freddie Mac. The 10 percent risk weight would apply so long as an Agreement remains in effect with the respective entity.

DATES: Comments must be received by November 26, 2008.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title ''Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Treatment of Certain Claims on, or Guaranteed by, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov*, under the ''More Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select OCC–2008–0016 to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *E-mail: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Fax:* (202) 874–4448.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2008–0016'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice of proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov*, under the ''More Search Options'' tab click next to the ''Advanced Document Search'' option where indicated, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2008–0016'' to view public comments for this rulemaking action.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1335, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- *E-mail: comments@FDIC.gov.*

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AD34.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html*, including any personal information provided.

OTS: You may submit comments, identified by OTS–2008–0014, by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov*, under the ''more Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Office of Thrift Supervision'' from the agency dropdown menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OTS–2008–0014'' to submit or view public comments and to view supporting and related materials for this proposed rulemaking. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2008–0014.
- *Facsimile:* (202) 906–6518.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2008–0014.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking.

All comments received will be posted without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

• *Viewing Comments Electronically:* Go to *http://www.regulations.gov*, under the ''More Search Options'' tab click next to the ''Advanced Document Search'' option where indicated, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OTS–2008–0014'' to view public comments for this notice of proposed rulemaking action.

• *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: *OCC:* Amrit Sekhon, Director, Capital Policy, (202) 874–5070, or David Elkes, Risk Expert, (202) 874–3846, or Carl Kaminski, Attorney, or Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Barbara J. Bouchard, Associate Director, (202) 452–3072; or Anna Lee Hewko, Senior Project Manager, (202) 530–6260, Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Assistant General Counsel, (202) 452–2263; or Benjamin W. McDonough, Senior Attorney, (202) 452–2036. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Bobby R. Bean, Policy Section, Chief, (202) 898–3575, or Nancy Hunt, Senior Policy Analyst, (202) 898–6643, Capital Markets Branch, Division of Supervision and Consumer Protection; or Mark Handzlik, Senior Attorney, (202) 898–3990, or Michael Phillips, Counsel, (202) 898–3581, Supervision Branch, Legal Division.

OTS: Michael Solomon, Director, Capital Risk, (202) 906–5654, Teresa A. Scott, Senior Policy Analyst, (202) 906–6478, Capital Risk, Marvin Shaw, Senior Attorney, (202) 906–6639, Legislation and Regulation Division Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On September 7, 2008, Treasury announced the establishment of the Government-Sponsored Enterprise Credit Facility to ensure credit availability to Fannie Mae and Freddie Mac. Treasury also entered into senior preferred stock purchase agreements, which ensure that each entity maintains a positive net worth and effectively support the holders of debt and MBS issued or guaranteed by Fannie Mae and Freddie Mac. The Agreements enhance market stability by providing additional security to debt holders—senior and subordinated—and improve mortgage affordability by providing additional confidence to investors in MBS guaranteed by Fannie Mae and Freddie Mac. Treasury indicated that these actions were necessary because ambiguities in the Congressional charters of Fannie Mae and Freddie Mac created a market perception of government backing.[1]

Under the agencies' general risk-based capital rules, claims on, and the portion of claims guaranteed by, U.S. government-sponsored agencies receive a 20 percent risk weight.[2] In light of the additional financial support Treasury has committed to provide under the Agreements, the agencies believe that a reduced risk weight is appropriate for claims on, or guaranteed by, Fannie Mae or Freddie Mac.

Specifically, the agencies are proposing to amend their respective general risk-based capital rules to permit banks, bank holding companies, and savings associations to assign a 10 percent risk weight to claims on, or guaranteed by, Fannie Mae or Freddie Mac. Claims include all credit exposures, such as senior and subordinated debt and counterparty credit risk exposures, but do not include preferred or common stock. This risk weight could be applied to credit exposures created on, before, or after September 7, 2008. The 10 percent risk weight, which would reflect the reduced credit risk of Fannie Mae and Freddie Mac in light of the Agreements, would apply to these exposures so long as an Agreement remains in effect with the respective entity. This proposal would not affect the calculation of the leverage ratio with respect to these exposures.

The Board is also proposing a technical amendment to the advanced approaches capital rule[3] to conform a cross reference affected by the proposed change to the general risk-based capital rule. The Board, FDIC, and OTS are proposing technical revisions to the general risk-based capital rules that update references to the risk-weight categories to reflect this proposal.

The agencies seek comment on all aspects of this notice of proposed rulemaking. In particular, the agencies request comment on the potential effects of this proposal on other banking organization claims on GSEs, such as Federal Home Loan Bank debt. In that regard, the agencies generally request comment on the appropriateness of the current 20 percent risk weight on claims on GSEs.

Regulatory Analysis

Executive Order 12866

Executive Order 12866 requires federal agencies to prepare a regulatory impact analysis for agency actions that are found to be ''significant regulatory actions.'' Significant regulatory actions include, among other things, rulemakings that ''have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.''[4] Regulatory actions that satisfy one or more of these criteria are referred to as ''economically significant regulatory actions.''

The OCC and OTS have each determined that this notice of proposed rulemaking likely would be an economically significant regulatory action for purposes of Executive Order 12866. However, in light of the exigent market circumstances resulting from the

[1] U.S. Department of Treasury Office of Public Affairs, ''Fact Sheet: Treasury Senior Preferred Stock Purchase Agreement,'' September 7, 2008. Available at *http://www.treas.gov/press/releases/reports/pspa_factsheet_090708%20hp1128.pdf.*

[2] *See* 12 CFR part 3, Appendix A, section 3(a)(2) (OCC); 12 CFR part 208, Appendix A, section III.C.2.b. and 12 CFR part 225, Appendix A section III.C.2.b. (Board); 12 CFR part 325, Appendix A, section II.C. (FDIC); and 12 CFR 567.6(a)(ii) (OTS).

[3] 12 CFR part 208, Appendix F (for state member banks) and 12 CFR part 225, Appendix G (for bank holding companies).

[4] Executive Order 12866 (September 30, 1993), 58 FR 51735 (October 4, 1993), as amended by Executive Order 13258, 67 FR 9385 (February 28, 2002) and by Executive Order 13422, 72 FR 2763 (January 23, 2007). For the complete text of the definition of ''significant regulatory action,'' see E.O. 12866 at § 3(f). A ''regulatory action'' is ''any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.'' E.O. 12866 at § 3(e).

immediate need to recognize the support provided by the U.S. Treasury Department's senior preferred stock purchase agreements with Fannie Mae and Freddie Mac, and to reduce strain on the capital positions of banking organizations that are holding securities issued by or guaranteed by Fannie Mae and Freddie Mac, the issuance of this notice of proposed rulemaking is subject to the procedures set forth in Section 6(a)(3)(D) of Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (Pub. L. 96–354, Sept. 19, 1980) (RFA) generally requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[5] The RFA provides that an agency is not required to prepare and publish an initial regulatory flexibility analysis if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.[6]

Under regulations issued by the Small Business Administration,[7] a small entity includes a bank holding company, commercial bank, or savings association with assets of $175 million or less (collectively, small banking organizations). The proposed rule would permit a banking organization to assign a 10 percent risk weight to claims on, and the portion of claims guaranteed by, Fannie Mae or Freddie Mac. The 10 percent risk weight would apply as long as an Agreement remains in effect between the Treasury and the respective entity.

Pursuant to section 605(b) of the RFA, each agency certifies that this proposed rule will not have a significant economic impact on a substantial number of the small entities it supervises. Accordingly, a regulatory flexibility analysis is not required. In making this determination, each agency considered the number of small banking organizations that currently hold claims on or guaranteed by either Fannie Mae or Freddie Mac, the cost of implementing the proposed rule for those banking organizations, and the size of the impact on those banking organizations' regulatory capital levels.

The Agencies have determined that a substantial number of small banking organizations hold claims on or are guaranteed by Fannie Mae or Freddie Mac.[8] However, the cost for each such a banking organization to adjust its systems to implement the proposed rule would not be significant since the only change would be a simple mathematical computation. Although reducing the risk weight for claims on or guaranteed by Fannie Mae and Freddie Mac to 10 percent would reduce required minimum regulatory capital, the agencies have determined that the average change in total risk-weighted assets, Tier 1 risk-based capital, and total risk-based capital would not be significant. Additionally, the Agencies note that the proposed rule would be elective. The proposed rule would apply only to banking organizations that choose to take advantage of the proposed 10 percent risk weight. Banking organizations not exercising this option would continue to apply the current 20 percent risk weight applicable to claims on or guaranteed by U.S. government-sponsored entities. The proposed rule does not impose any new mandatory requirements or burdens. Finally, because the proposed rule would apply to all banking organizations, the proposed rule does not have a disproportionate effect on small entities.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), each agency has reviewed the proposed rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the notice of proposed rulemaking.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. (The inflation adjusted threshold is $133 million or more.) If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS each determined that its proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $133 million or more in any one year. Accordingly, neither OCC nor OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Solicitation of Comments on Use of Plain Language

Section 722 of the GLBA required the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite comment on how to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, Banking, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Administrative practice and procedure, Banks, Banking, Capital, Reporting and recordkeeping requirements, Risk.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Reporting and recordkeeping requirements, Risk.

12 CFR Part 325

Administrative practice and procedure, Banks, Banking, Capital Adequacy, Reporting and recordkeeping requirements, Risk.

[5] *See* 5 U.S.C. 603(a).

[6] *See* 5 U.S.C. 605(b).

[7] *See* 13 CFR 121.201.

[8] As of June 30, 2008, there were 2,636 small bank holding companies, 889 small national banks, 454 small state member banks, 3,222 small state nonmember banks, and 412 small savings associations. The agencies estimate that the proposal would have an impact on 0 small bank holding companies, 679 small national banks, 420 small state member banks, 2,903 small state nonmember banks, and 350 small savings associations.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Risk, Savings associations

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the common preamble, the Office of the Comptroller of the Currency proposes to amend Part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3, in section 3:

a. Revise paragraphs (a)(2)(vi) and (a)(2)(vii), except footnote 10; and

b. Add a new paragraph (a)(7).

3. The revision and addition read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(2) * * *

(vi) Except as provided in paragraph (a)(7) of this section, securities issued by, or other direct claims on, United States Government-sponsored agencies.

(vii) Except as provided in paragraph (a)(7) of this section, that portion of assets guaranteed by United States Government-sponsored agencies.[10]

* * * * *

(7) *Federal Home Loan Mortgage Corporation and Federal National Mortgage Corporation.* Notwithstanding paragraphs (a)(2)(vi) and (vii) of this section, claims on, and the portions of claims that are guaranteed by, the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Corporation (FNMA), may receive a risk weight of 10 percent as long as the U.S. Department of Treasury's Senior Preferred Stock Purchase Agreement, dated as of September 7, 2008, remains in effect with the respective corporations.

* * * * *

[10] * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the common preamble, the Board of Governors of the Federal Reserve System proposes to amend parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In Appendix A to part 208, amend section III.C. as set forth below:

a. Remove the introductory paragraph to section III.C.;

b. Redesignate paragraphs 2, 3, and 4 as paragraphs 3, 4, and 5, respectively;

c. Add new paragraph 2;

d. In newly redesignated paragraph 3, revise the heading, paragraph 3(b), and footnote 36, except footnote 37; and

e. In newly redesignated paragraphs 4 and 5, revise the headings to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

III. * * *

C. * * *

* * * * *

2. *Category 2: 10 percent.* This category includes claims on, and the portions of claims that are guaranteed by, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Corporation (Fannie Mae), so long as the U.S. Department of Treasury's senior preferred stock purchase agreement, dated as of September 7, 2008, remains in effect with the respective entity. However, at its option, a bank may choose to assign claims described in this ten percent risk weight category to the twenty percent risk weight category.

3. *Category 3: 20 percent.*

* * * * *

b. This category also includes the portions of claims that are conditionally guaranteed by OECD central governments and U.S. government agencies, as well as the portions of local currency claims that are conditionally guaranteed by non-OECD central governments, to the extent that the bank has liabilities booked in that currency. In addition, except as provided in paragraph 2 of this section, this category also includes claims on, and the portions of claims that are guaranteed by, U.S. government-sponsored[36] agencies and claims on, and the portions of claims guaranteed by, the International Bank for Reconstruction and Development (World Bank), the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank for Reconstruction and Development, the Nordic Investment Bank, and other multilateral lending institutions or regional development banks in which the U.S. government is a shareholder or contributing member. General obligation claims on, or portions of claims guaranteed by the full faith and credit of, states or other political subdivisions of the United States or other countries of the OECD-based group are also assigned to this category.[37]

* * * * *

4. *Category 4: 50 percent.* * * *

* * * * *

5. *Category 5: 100 percent.* * * *

* * * * *

3. In Appendix F to part 208, Part I, section 2, revise the definition of ''Excluded mortgage exposure'' as set forth below:

Appendix F to Part 208—Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurements Approaches

Part I. * * *

Section 2. * * *

* * * * *

Excluded mortgage exposure means any one-to-four-family residential pre-sold construction loan for a residence for which the purchase contract is cancelled that would receive a 100 percent risk weight under section 618(a)(2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act and under 12 CFR part 208, appendix A, section III.C.4.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b),

[36] For this purpose, U.S. government-sponsored agencies are defined as agencies originally established or chartered by the Federal government to serve public purposes specified by the U.S. Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. These agencies include Freddie Mac, Fannie Mae, the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA). Claims on U.S. government-sponsored agencies include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that Bank.

[37] * * *.

1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

2. In Appendix A to part 225, amend section III.C. as set forth below:

a. Remove the introductory paragraph;

b. Redesignate paragraphs 2, 3, and 4 as paragraphs 3, 4, and 5, respectively;

c. Add new paragraph 2;

d. In newly redesignated paragraph 3, revise the heading, paragraph 3(b), and footnote 43, except footnote 44; and

e. In newly redesignated paragraphs 4 and 5, revise the headings to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

III. * * *

C. * * *

* * * * *

2. *Category 2: 10 percent.* This category includes claims on, and the portions of claims that are guaranteed by, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Corporation (Fannie Mae), so long as the U.S. Department of Treasury's senior preferred stock purchase agreement, dated as of September 7, 2008, remains in effect with the respective entity. However, at its option, a banking organization may choose to assign claims described in this ten percent risk weight category to the twenty percent risk weight category.

3. *Category 3: 20 percent.*

* * * * *

b. This category also includes the portions of claims that are conditionally guaranteed by OECD central governments and U.S. government agencies, as well as the portions of local currency claims that are conditionally guaranteed by non-OECD central governments, to the extent that the bank has liabilities booked in that currency. In addition, except as provided in paragraph 2 of this section, this category also includes claims on, and the portions of claims that are guaranteed by, U.S. government-sponsored [43] agencies and claims on, and the portions of claims guaranteed by, the International Bank for Reconstruction and Development (World Bank), the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank for Reconstruction and Development, the Nordic Investment Bank, and other multilateral lending institutions or regional development banks in which the U.S. government is a shareholder or contributing member. General obligation claims on, or portions of claims guaranteed by the full faith and credit of, states or other political subdivisions of the United States or other countries of the OECD-based group are also assigned to this category.[44]

* * * * *

4. *Category 4: 50 percent.*

* * * * *

5. *Category 5: 100 percent.*

* * * * *

3. In Appendix G to part 225, Part I, section 2, revise the definition of ''Excluded mortgage exposure'' as set forth below:

Appendix G to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Internal-Ratings-Based and Advanced Measurement Approaches

PART I. * * *

Section 2. * * *

* * * * *

Excluded mortgage exposure means any one-to-four-family residential pre-sold construction loan for a residence for which the purchase contract is cancelled that would receive a 100 percent risk weight under section 618(a)(2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act and under 12 CFR part 225, appendix A, section III.C.4.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the common preamble, the Federal Deposit Insurance Corporation proposes to amend Part 325 of chapter III of Title 12, Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n, note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In Appendix A to part 325, amend section II.A by revising paragraph 1 to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

A. * * *

1. Under the risk-based capital framework, a bank's balance sheet assets and credit equivalent amounts of off-balance sheet items are assigned to one of six broad risk categories according to the obligor or, if relevant, the guarantor or the nature of the collateral. The aggregate dollar amount in each category is then multiplied by the risk weight assigned to that category. The resulting weighted values from each of the six risk categories are added together and this sum is the risk-weighted assets total that, as adjusted,[10] comprises the denominator of the risk-based capital ratio.

* * * * *

3. In Appendix A to part 325, amend section II.C. as follows:

a. Revise the introductory paragraph;

b. Redesignate Category 2 through Category 5 as Category 3 through Category 6, respectively;

c. Add new Category 2;

d. Revise redesignated Category 3, paragraph (b) and footnote 34; and

e. Revise the headings for redesignated Categories 3, 4, 5, and 6 to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

C. * * *

The risk-based capital framework contains six risk weight categories—0 percent, 10 percent, 20 percent, 50 percent, 100 percent and 200 percent. In general, if a particular item can be placed in more than one risk category, it is assigned to the category that has the lowest risk weight. An explanation of the components of each category follows:

* * * * *

Category 2—10 Percent Risk Weight. This category includes claims on, or portions of claims guaranteed by, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Corporation (Fannie Mae), so long as the U.S. Department of Treasury's Senior Preferred Stock Purchase Agreement, dated as of September 7, 2008, remains in effect with Freddie Mac and Fannie Mae, respectively. However, at its option, a bank may choose to assign claims described in this category to the 20 percent risk weight category.

Category 3—20 Percent Risk Weight.

* * * * *

b. Except as provided in the ten percent risk weight category, this category includes claims on, or portions of claims guaranteed by, U.S. Government-sponsored agencies;[34] and portions of claims (including repurchase agreements) collateralized by securities issued or guaranteed by OECD central governments, U.S. Government agencies, or U.S. Government-sponsored agencies. Also included in the 20 percent risk weight category are portions of claims that are conditionally guaranteed by OECD central governments and U.S. Government agencies, as well as portions of local currency claims that are conditionally guaranteed by non-OECD central governments to the extent that the bank has liabilities booked in that currency.

[43] For this purpose, U.S. government-sponsored agencies are defined as agencies originally established or chartered by the Federal government to serve public purposes specified by the U.S. Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. These agencies include Freddie Mac, Fannie Mae, the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA). Claims on U.S. government-sponsored agencies include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that Bank.

[44] * * *.

[34] For risk-based capital purposes, U.S. Government-sponsored agencies are defined as agencies originally established or

chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose debt obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. Government. These agencies include the Farm Credit System, the Federal Home Loan Bank System, the Student Loan Marketing Association, Freddie Mac, and Fannie Mae. For risk-based capital purposes, claims on U.S. Government-sponsored agencies also include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that bank.

* * * * *

Category 4—50 Percent Risk Weight.

* * * * *

Category 5—100 Percent Risk Weight.

* * * * *

Category 6—200 Percent Risk Weight.

* * * * *

4. In Appendix A to part 325, amend the Table II to section II.C. as follows:

a. Redesignate Category 2 through Category 5 as Category 3 through Category 6 respectively;

b. Add new Category 2;

c. Revise redesignated Category 3, paragraph (5);

d. Revise footnote 2; and

e. Revise the headings for redesignated Categories 3, 4, 5, and 6 to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

C. * * *

* * * * *

TABLE II—SUMMARY OF RISK WEIGHTS AND RISK CATEGORIES

* * * * *

Category 2—10 Percent Risk Weight. This category includes claims on, or portions of claims guaranteed by, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Corporation (Fannie Mae), so long as the U.S. Department of Treasury's Senior Preferred Stock Purchase Agreement, dated as of September 7, 2008, remains in effect with Freddie Mac and Fannie Mae, respectively. However, at its option, a bank may choose to assign claims described in this category to the 20 percent risk weight category.

Category 3—20 Percent Risk Weight.

* * * * *

(5) Except as provided in the ten percent risk weight category, securities and other claims on, or portions of claims guaranteed by, U.S. Government-sponsored agencies;[2]

[2] For risk-based capital purposes, U.S. Government-sponsored agencies are defined as agencies originally established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose debt obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. Government. These agencies include the Farm Credit System, the Federal Home Loan Bank System, the Student Loan Marketing Association, Freddie Mac, and Fannie Mae. For risk-based capital purposes, claims on U.S. Government-sponsored agencies also include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that bank.

* * * * *

Category 4—50 Percent Risk Weight. * * *

* * * * *

Category 5—100 Percent Risk Weight.

* * *

* * * * *

Category 6—200 Percent Risk Weight.

* * *

* * * * *

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set forth in the common preamble, the Office of Thrift Supervision proposes to amend part 567 of chapter V of title 12 of the Code of Federal Regulations as follows:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.6 is amended as set forth below:

a. Redesignate paragraphs (a)(1)(ii) through (a)(1)(iv) as paragraphs (a)(1)(iii) through (a)(1)(v), respectively;

b. Revise paragraph (a)(1) and add paragraph (a)(1)(ii);

c. Revise the headings in redesignated paragraphs (a)(1)(iii), (a)(1)(iv) and (a)(1)(v); and

d. Revise redesignated paragraphs (a)(1)(iii)(E) and (a)(1)(iii)(F) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) *On-balance sheet assets.* Except as provided in paragraph (b) of this section, risk-weighted on-balance sheet assets are computed by multiplying the on-balance sheet asset amounts times the appropriate risk-weight categories. The risk-weight categories are zero percent risk weight (Category 1) at section 567.6(a)(1)(i), 10 percent risk weight (Category 2) at section 567.6(a)(1)(ii), 20 percent risk weight (Category 3) at section 567.6(a)(1)(iii), 50 percent risk weight (Category 4) at section 567.6(a)(1)(iv), and 100 percent risk weight (Category 5) at section 567.6(a)(1)(v).

(i) Category 1—Zero Percent Risk Weight

* * * * *

(ii) Category 2—10 Percent Risk Weight

To the extent that the U.S. Department of Treasury's Senior Preferred Stock Purchase Agreement, dated as of September 7, 2008, remains in effect with the respective corporations, this category includes

(A) Securities (not including common stock or preferred stock) issued by, or other direct claims on, the Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae).

(B) That portion of assets guaranteed by the Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae).

(C) At its option, a savings association may choose to assign assets described in section 567.6(a)(1)(ii)(A) and (B) to the twenty percent risk weight category.

(iii) Category 3—20 Percent Risk Weight * * *

* * * * *

(E) Securities (not including equity securities) issued by, or other direct claims on, United States Government-sponsored agencies, other than the Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae).

(F) That portion of assets guaranteed by United States Government-sponsored agencies, other than the Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae).

* * * * *

(iv) Category 4—50 Percent Risk Weight

* * * * *

(v) Category 5—100 Percent Risk Weight

* * * * *

Dated: October 3, 2008.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 21, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 7th day of October 2008.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: October 2, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E8–25555 Filed 10–24–08; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2007–N–0465]

Label Requirement for Food That Has Been Refused Admission Into the United States; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of Thursday, September 18, 2008 (73 FR 54106). The document issued a proposed rule that would require owners or consignees to label imported food that is refused entry into the United States. The preamble to the proposed rule inadvertently omitted a reference. This document corrects that error.

DATES: Effective October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Preparedness (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0587.

SUPPLEMENTARY INFORMATION: In FR Doc. E8–21813, appearing on page 54118, in the **Federal Register** of Thursday, September 18, 2008, the following correction is made;

1. On page 54118, in the first column, after reference number ''6.'' and before the ''List of Subjects in 21 CFR Part 1,'' reference ''7. '' is added to read:

''7. Memorandum to the record from J. Bradley Brown, Food and Drug Administration, dated March 20, 2008.''

Dated: October 21, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–25588 Filed 10–24–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1001]

RIN 1625–AA00

Security Zone; Potomac and Anacostia Rivers, Washington, DC, Arlington and Fairfax Counties, VA, and Prince Georges County, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary security zone encompassing certain waters of the Potomac and Anacostia Rivers in order to safeguard high-ranking government officials and the public-at-large before, during, and after scheduled activities associated with the 2009 Presidential Inauguration. This security zone will be in effect between January 14, 2009 and January 25, 2009.

DATES: Comments and related material must reach the Coast Guard on or before November 26, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–1001 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call 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 or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–1001) in the Search box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the 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.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The 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 proposed 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 proposing to establish a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against the large gatherings of high-ranking United States officials, the public at large, and surrounding waterfront areas and communities would have. The proposed security zone is necessary to safeguard life and property on the navigable waters before, during, and after scheduled activities associated with the 2009 Presidential Inauguration and will help the Coast Guard prevent vessels or persons from bypassing the security measures established on shore for the events and engaging in waterborne terrorist actions during the highly publicized events.

Discussion of Proposed Rule

On Tuesday, January 20, 2009, the U.S. Presidential Inauguration will take place at the U.S. Capitol in Washington, DC. Activities associated with the 2009 Presidential Inauguration in and near the District of Columbia will include several Inaugural balls, parades and receptions. The proposed zone will be in effect from January 14, 2009 through January 25, 2009. The proposed zone will cover (1) all waters of the Potomac River, from shoreline to shoreline, bounded on the north by the Francis Scott Key (U.S. Route 29) Bridge, downstream to and bounded on the south from a position at latitude 38°46′42″ N, longitude 077°02′55″ W on the Virginia shoreline to a position at latitude 38°46′42″ N, longitude 077°01′33″ W on the Maryland shoreline, including the waters of the Georgetown Channel Tidal Basin; and (2) all waters of the Anacostia River, from shoreline to shoreline, bounded on the north by the New York Avenue (U.S. Route 50) Bridge, downstream to and bounded on the south by its confluence with the Potomac River.

This rule requires that entry into or remaining in this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor in the security zone at the time the security zone is implemented do not have to depart the zone. All vessels underway within this security zone at the time it is implemented are to depart the zone. However, the Captain of the Port may, in his discretion, grant waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures. To seek permission to transit the area, the Captain of the Port Baltimore can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard will issue Broadcast Notices to Mariners to further publicize the security zone.

Regulatory Analyses

We developed this proposed 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 proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. There is no vessel traffic associated with recreational boating and commercial fishing during the effective period, and vessels may seek permission 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 proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or transit on (1) all waters of the Potomac River, from shoreline to shoreline, bounded on the north by the Francis Scott Key (U.S. Route 29) Bridge, downstream to and bounded on the south from a position at latitude 38°46′42″ N, longitude 077°02′55″ W on the Virginia shoreline to a position at latitude 38°46′42″ N, longitude 077°01′01″ W on the Maryland shoreline, including the waters of the Georgetown Channel Tidal Basin; and (2) all waters of the Anacostia River, from shoreline to shoreline, bounded on the north by the New York Avenue (U.S. Route 50) Bridge, downstream to and bounded on the south by its confluence with the Potomac River. This security zone would not have a significant economic impact on a substantial number of small entities because vessels with compelling interests that outweigh the port's security needs may be granted waivers from the requirements of the security zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your

small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under 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 made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–1001 to read as follows:

§ 165.T05–1001 Security Zone; Potomac and Anacostia Rivers, Washington, DC, Arlington and Fairfax Counties, VA, and Prince Georges County, MD.

(a) *Location.* The following area is a security zone: (1) all waters of the Potomac River, from shoreline to shoreline, bounded on the north by the Francis Scott Key (U.S. Route 29) Bridge, downstream to and bounded on the south from a position at latitude 38°46′42″ N, longitude 077°02′55″ W on the Virginia shoreline to a position at latitude 38°46′42″ N, longitude 077°01′33″ W on the Maryland shoreline, including the waters of the Georgetown Channel Tidal Basin; and (2) all waters of the Anacostia River, from shoreline to shoreline, bounded on the north by the New York Avenue (U.S. Route 50) Bridge, downstream to and bounded on the south by its confluence with the Potomac River.

(b) *Definitions.* As used in this section:

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

Designated representative means any Coast Guard commissioned, warrant, or

petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the security zone described in paragraph (a) of this section.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the security zone is implemented do not have to depart the security zone. All vessels underway within this security zone at the time it is implemented are to depart the zone. The Captain of the Port Baltimore may, in his discretion, grant waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). 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, or other Federal, State, or local agency 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 or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

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

(d) *Enforcement period.* This section will be enforced from 4 a.m. on January 14, 2009, through 10 p.m. on January 25, 2009.

Dated: October 6, 2008.

Brian D. Kelley,

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

[FR Doc. E8–25435 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207, 235, and 252

RIN 0750–AF96

Defense Federal Acquisition Regulation Supplement; Protection of Human Subjects in Research Projects (DFARS Case 2007–D008)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for the protection of human subjects involved in research projects. The proposed rule contains a clause for use in contracts that include or may include research involving human subjects.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before *December 26, 2008,* to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007–D008, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2007–D008 in the subject line of the message.
- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703–602–0302.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule addresses statutory and regulatory requirements for the ethical treatment of human subjects involved in research projects. The proposed rule contains a clause for use in contracts involving human subjects in research, to inform contractors of their responsibilities for compliance with 32 CFR Part 219; DoD Directive 3216.02; applicable DoD component policies; 10 U.S.C. 980; and, when applicable, Food and Drug Administration policies and regulations.

This proposed rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule is a reinforcement of existing requirements and obligations that apply with regard to the protection of human subjects involved in research projects. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2007–D008.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the proposed rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 207, 235, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR Parts 207, 235, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 207, 235, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 207—ACQUISITION PLANNING

2. Section 207.172 is added to read as follows:

207.172 Human research.

Any DoD component sponsoring research involving human subjects—

(a) Is responsible for oversight of compliance with 32 CFR Part 219, Protection of Human Subjects; and

(b) Must have a Human Research Protection Official, as defined in the clause at 252.235–70XX, Protection of Human Subjects, and identified in the DoD component's Human Research Protection Management Plan. This official is responsible for the oversight and execution of the requirements of the clause at 252.235–70XX and shall be identified in acquisition planning.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

3. Section 235.072 is amended by adding paragraph (e) to read as follows:

235.072 Additional contract clauses.

* * * * *

(e) Use the clause at 252.235–70XX, Protection of Human Subjects, in solicitations and contracts that include or may include research involving human subjects in accordance with 32 CFR Part 219, DoD Directive 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b).

The clause—

(1) Applies to solicitations and contracts awarded by any DoD component, regardless of mission or funding Program Element Code; and

(2) Does not apply to use of cadaver materials alone, which are not directly regulated by 32 CFR Part 219 or DoD Directive 3216.02, and which are governed by other DoD policies and applicable State and local laws.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.235–70XX is added to read as follows:

252.235–70XX Protection of Human Subjects.

As prescribed in 235.072(e), use the following clause:

PROTECTION OF HUMAN SUBJECTS (XXX 2008)

(a) *Definitions.* As used in this clause—

(1) *Assurance of compliance* means a written assurance that an institution will comply with requirements of 32 CFR Part 219, as well as the terms of the assurance, which the Human Research Protection Official determines to be appropriate for the research supported by the Department of Defense (DoD) component (32 CFR 219.103).

(2) *Human Research Protection Official (HRPO)* means the individual designated by the head of the applicable DoD component and identified in the component's Human Research Protection Management Plan as the official who is responsible for the oversight and execution of the requirements of this clause, although some DoD components may use a different title for this position.

(3) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual, or identifiable private information (32 CFR 219.102(f)). For example, this could include the use of human organs, tissue, and body fluids from individually identifiable living human subjects as well as graphic, written, or recorded information derived from individually identifiable living human subjects.

(4) *Institution* means any public or private entity or agency (32 CFR 219.102(b)).

(5) *Institutional Review Board (IRB)* means a board established for the purposes expressed in 32 CFR Part 219 (32 CFR 219.102(g)).

(6) *IRB approval* means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and Federal requirements (32 CFR 219.102(h)).

(7) *Research* means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of 32 CFR Part 219, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities (32 CFR 219.102(d)).

(b) The Contractor shall oversee the execution of the research to ensure compliance with this clause. The Contractor shall comply fully with 32 CFR Part 219 and DoD Directive 3216.02, applicable DoD component policies, 10 U.S.C. 980 and, when applicable, Food and Drug Administration policies and regulations.

(c) The Contractor shall not commence performance of research involving human subjects that is covered under 32 CFR Part 219 or that meets exemption criteria under 32 CFR 219.101(b), or expend funding on such effort, until and unless the conditions of either the following paragraph (c)(1) or (c)(2) have been met:

(1) The Contractor furnishes to the HRPO, with a copy to the Contracting Officer, an assurance of compliance and IRB approval and receives notification from the Contracting Officer that the HRPO has approved the assurance as appropriate for the research under the Statement of Work and also that the HRPO has reviewed the protocol and accepted the IRB approval for compliance with the DoD component policies. The Contractor may furnish evidence of an existing assurance of compliance for acceptance by the HRPO, if an appropriate assurance has been approved in connection with previous research. The Contractor shall notify the Contracting Officer immediately of any suspensions or terminations of the assurance.

(2) The Contractor furnishes to the HRPO, with a copy to the Contracting Officer, a determination that the human research proposed meets exemption criteria in 32 CFR 219.101(b) and receives written notification from the Contracting Officer that the exemption is determined acceptable. The determination shall include citation of the exemption category under 32 CFR 219.101(b) and a rationale statement. In the event of a disagreement regarding the Contractor's furnished exemption determination, the HRPO retains final judgment on what research activities or classes of research are covered or are exempt under the contract.

(d) DoD staff, consultants, and advisory groups may independently review and inspect the Contractor's research and research procedures involving human subjects and, based on such findings, DoD may prohibit research that presents unacceptable hazards or otherwise fails to comply with DoD procedures.

(e) Failure of the Contractor to comply with the requirements of this clause will result in the issuance of a stop-work order under Federal Acquisition Regulation clause 52.242–15 to immediately suspend, in whole or in part, work and further payment under this contract, or will result in other issuance of suspension of work and further payment for as long as determined necessary at the discretion of the Contracting Officer.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that may include research involving human subjects in accordance with 32 CFR Part 219, DoD Directive 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b). This clause does not apply to subcontracts that involve only the use of cadaver materials.

(End of clause.)

[FR Doc. E8–25562 Filed 10–24–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 402

[FWS–R9–ES–2008–0093]

RIN 1018–AT50

DEPARTMENT OF COMMERE

National Marine Fisheries Service

50 CFR Part 402

[0808011023–81048–01]

RIN 0618–AX15

Interagency Cooperation Under the Endangered Species Act

AGENCIES: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, Commerce.

ACTION: Proposed rule; availability of Draft Environmental Assessment on proposed rule revising regulations implementing section 7 of the Endangered Species Act (ESA).

SUMMARY: The United States Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, ''Services'' or ''we'') previously proposed to amend regulations governing interagency cooperation under the Endangered Species Act of 1973 (Act) (73 FR 47868–47875; August 15, 2008).

The Services proposed these regulatory changes to improve the effectiveness and efficiency of the section 7(a)(2) consultation process. This **Federal Register** notice advises the public that we (FWS and NOAA) have prepared a Draft Environmental Assessment (Draft EA) under the National Environmental Policy Act (NEPA) that assesses the potential environmental effects of the proposed regulatory changes currently under consideration. The Draft EA is available for public review at the following Web site: *http://www.doi.gov/issues/esa.html.*

DATES: To ensure consideration, we must receive written comments by November 6, 2008.

ADDRESSES: Comments may be submitted in two ways: (1) Through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments; or (2) by U.S. mail or hand-delivery to Public Comment Processing, Attention: 1018-AT50, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203. We will not accept e-mail or faxes.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary for Fish and Wildlife and Parks, 1849 C Street, NW., Washington, DC 20240, telephone: 202–208–4416; or James H. Lecky, Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: 301–713–2332.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973, as amended (''Act''; 16 U.S.C. 1531 *et seq.*) provides that the Secretaries of the Interior and Commerce (the ''Secretaries'') share responsibilities for implementing most of the provisions of the Act. Generally, marine species are under the jurisdiction of the Secretary of Commerce and all other species are under the jurisdiction of the Secretary of the Interior. With respect to agency consultation pursuant to Section 7 of the Act, authority to administer the Act has been delegated by the Secretary of the Interior to the Director of the FWS and by the Secretary of Commerce through the Administrator of the National Oceanic and Atmospheric Administration to the Assistant Administrator for NMFS.

On May 15, 2008, Secretary Kempthorne announced that he would propose common sense modifications to the existing regulations that implement this section of the ESA in order to provide greater clarity and certainty to the inter-agency consultation process. In the **Federal Register** notice proposing the regulatory modifications analyzed in this EA, the Services noted the importance of refining the ESA section 7(a)(2) consultation process to better set forth certain regulatory definitions and the applicability of this important interagency process.

While neither NEPA nor its implementing regulations require that EAs be made available for public comment, the Services' have concluded that it is appropriate in this instance to provide an opportunity for public review and comment on the draft EA, as set forth above.

Dated: October 23, 2008.

David M. Verhey,

Acting Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.

Samuel D. Rauch,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. E8–25678 Filed 10–23–08; 4:15 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 080723890–81314–01]

RIN 0648–AX03

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust quotas for the 2009 fishing season for sandbar sharks, non–sandbar large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks managed under Amendment 2 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) based on any over– and/or underharvests experienced during the 2008 Atlantic commercial shark fishing season. The purpose of this proposed action is to provide advance notice of quotas for the Atlantic commercial shark fishery and address any over– and/or underharvests that may have occurred in the Atlantic shark fishery during the 2008 fishing season.

DATES: Written comments will be accepted until November 26, 2008.

ADDRESSES: You may submit comments, identified by 0648–AX03, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 301–713–1917, Attn: Karyl Brewster–Geisz
- Mail: 1315 East–West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Proposed Rule for 2009 Atlantic Commercial Shark Fishing Season. ''

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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster–Geisz by phone: 301–713–2347, or by fax: 301–713–1917, or Jackie Wilson by phone: 240–338–3936.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic shark fishery is managed under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act). The regulations outlined in the 2006 Consolidated HMS FMP and its amendments are implemented at 50 CFR part 635.

On July 24, 2008, NMFS published a final rule (73 FR 35778, corrected at 73 FR 40658, July 15, 2008) implementing Amendment 2 to the 2006 Consolidated HMS FMP. That final rule established the annual quotas for all Atlantic shark fisheries and also established adjusted base annual quotas for non–sandbar LCS and sandbar sharks through December 31, 2012, to account for large overharvests that occurred in 2007. That final rule also established accounting measures for under– and overharvests and redefined the regions in the shark fishery.

As a result of that final rule, the Atlantic shark annual quotas and adjusted base annual quotas apply to all areas of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea, with the exception of non–sandbar LCS quota outside of the shark research fishery. The non–sandbar LCS quota outside the research fishery is split between the Atlantic Ocean and Gulf of Mexico. The boundary delineating these two regions is a line beginning on the east coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

Accounting for Under– and Overhavests

Consistent with 50 CFR 635.27(b)(1)(vii)(A), if the available quota in a particular region or in the research fishery for non–sandbar LCS is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years, in the specific region or research fishery where the overharvest occurred. If the available quota for sandbar sharks, SCS, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks (other than porbeagle or blue sharks) by the amount that the blue shark quota is exceeded prior to the start of the next fishing season or, depending on the level of overharvest(s), NMFS will deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years.

If an annual quota for sandbar sharks, SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) is not exceeded, NMFS may adjust the annual quota depending on the status of the stock or quota group. If the annual quota for non–sandbar LCS is not exceeded in either region or in the research fishery, NMFS may adjust the annual quota for that region or the research fishery depending on the status of the stock or quota group. If the stock/complex (e.g., sandbar sharks, porbeagle sharks, non–sandbar LCS, or blue sharks) or specific species within a quota group (e.g., blacknose sharks within the SCS complex) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS will not adjust the following fishing year's quota for any underharvest, and the following fishing year's quota will be equal to the base annual quota (or the adjusted base quota for sandbar sharks and non–sandbar LCS until December 31, 2012).

Currently, blacknose sharks within the SCS complex and sandbar sharks have been determined to be overfished with overfishing occurring. Porbeagle sharks have been determined to be overfished. Blue sharks and pelagic sharks (other than porbeagle or blue sharks) have an unknown stock status. Finally, blacktip sharks in the Gulf of Mexico region were determined to not be overfished with no overfishing occurring. However, blacktip sharks were placed in the non–sandbar LCS complex for the Atlantic and Gulf of Mexico regions, the status of which has been determined to be unknown. Therefore, since the individual species, complexes, and species within a complex have all been determined to be either overfished, overfished with overfishing occurring, or unknown, no underharvests from the 2008 Atlantic commercial shark fishing season will be applied to the 2009 annual quotas or adjusted base quotas. Thus, the 2009 proposed quotas will be equal to the base annual quota for SCS, porbeagle sharks, blue sharks, and pelagic sharks (other than porbeagle or blue sharks) or the adjusted base annual quota for sandbar sharks and non–sandbar LCS, minus any potential overharvests that may have occurred in the 2008 season.

2009 Proposed Quotas

This proposed rule does not propose any changes to the overall adjusted base and annual commercial quotas as established under Amendment 2 to the 2006 Consolidated HMS FMP. Proposed 2009 quotas for the 2009 Atlantic commercial shark fishing season by species and species group are summarized in Tables 1 and 2.

TABLE 1. 2009 PROPOSED QUOTAS FOR NON–SANDBAR LCS AND SANDBAR SHARKS FOR THE 2009 COMMERCIAL SHARK FISHING SEASON.

All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise.

Species Group	Region	2008 Base Annual Quota[1]	80 Percent of 2008 Available Quota	Preliminary 2008 Landings[2]	Overharvest	2009 Base Annual Quota	2009 Proposed Quota	Proposed Season
Non–Sandbar Large Coastal Sharks	Gulf of Mexico	390.5 (860,896 lb dw)	312.4 (688,717 lb dw)	96.4 (212,652 lb dw)	390.5 (860,896 lb dw)	390.5 (860,896 lb dw)	Effective date of final rule — To be determined	
	Atlantic	187.8 (414,024 lb dw)	150.2 (331,131 lb dw)	118.6 (261,466 lb dw)	—	187.8 (414,024 lb dw)	187.8 (414,024 lb dw)	
Non–Sandbar LCS Research Quota	No regional quotas	37.5 (82,673 lb dw)	30.0 (66,138 lb dw)	3.3 (7,275 lb dw)	–	37.5 (82,673 lb dw)	37.5 (82,673 lb dw)	
Sandbar Research Quota		87.9 (193,784 lb dw)	70.3 (154,983 lb dw)	27.2 (59,965 lb dw)	—	87.9 (193,784 lb dw)	87.9 (193,784 lb dw)	

[1]2008 annual base quotas are the quotas being implemented from July 24, 2008, until December 31, 2012.
[2]Landings are from January 1, 2008 until September 15, 2008, and are subject to change.

TABLE 2. 2009 PROPOSED QUOTAS FOR SCS AND PELAGIC SHARKS FOR THE 2009 COMMERCIAL SHARK FISHING SEASON.

All quotas and landings are dressed weight, in metric tons, unless specified otherwise.

Species Group	Region	2008 Annual Quota	80 Percent of 2008 Available Quota	Preliminary 2008 Landings[1]	Overharvest	2009 Annual Quota	2009 Proposed Quota	Proposed Season
Small Coastal Sharks	No regional quotas	454 (1,000,888 lb dw)	363.2 (800,710 lb dw)	154.7 (341,054 lb dw)	—	454 (1,000,888 lb dw)	454 (1,000,888 lb dw)	Effective date of final rule — To be determined
Blue Sharks		273 (601,856 lb dw)	218.4 (481,485 lb dw)	0.6 (1,224 lb dw)	—	273 (601,856 lb dw)	273 (601,856 lb dw)	
Porbeagle Sharks		1.7 (3,748 lb dw)	1.36 (2,998 lb dw)	0.9 (1,888 lb dw)	—	1.7 (3,748 lb dw)	1.7 (3,748 lb dw)	
Pelagic Sharks Other Than Porbeagle or Blue		488 (1,075,856 lb dw)	390.4 (860,676 lb dw)	103.5 (228,139 lb dw)	—	488 (1,075,856 lb dw)	488 (1,075,856 lb dw)	

[1]Landings are from January 1, 2008, until September 15, 2008, and are subject to change.

As of September 15, 2008, no Atlantic commercial shark quotas have been exceeded during the 2008 Atlantic commercial shark fishing season. The 2009 proposed quotas for the respective shark complexes/species are subject to change in the final rule for this action, based on any final calculations that reveal, if any, overharvests in the 2008 season.

1. Proposed 2009 Quotas for Non–Sandbar LCS and Sandbar Sharks Within the Shark Research Fishery

Pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 adjusted base annual commercial quotas within the shark research fishery are 37.5 mt dw (82,673 lb dw) for non–sandbar LCS and 87.9 mt dw (193,784 lb dw) for sandbar sharks. This proposed rule does not propose any changes to any of the overall adjusted base commercial quotas.

Within the shark research fishery, as of September 15, 2008, preliminary reported landings of non–sandbar LCS were at 8.8 percent (3.3 mt dw), and sandbar shark reported landings were at 30.9 percent (27.2 mt dw). These reported landings do not exceed the available quota. Therefore, based on preliminary estimates, the 2009 proposed quotas do not need to be reduced based on any overharvests, consistent with the current regulations at 50 CFR 635.27(b)(1)(vii).

Under 50 CFR 635.27(b)(1)(vii)(A), because the individual species, complexes, or species within a complex have been determined to be either overfished, overfished with overfishing occurring, or have an unknown status, underharvests for these species and/or complexes would not be applied to the 2009 quotas. Therefore, the 2009 proposed quotas would be the adjusted base annual quotas for non–sandbar LCS and sandbar sharks within the shark research fishery (37.5 mt dw (82,673 lb

dw) and 87.9 mt dw (193,784 lb dw), respectively).

2. Proposed 2009 Quotas for the Non–Sandbar LCS in the Gulf of Mexico Region

Pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 adjusted base annual quota for non–sandbar LCS in the Gulf of Mexico region is 390.5 mt dw (860,896 lb dw). As of September 15, 2008, preliminary reported landings were at 24.7 percent (96.4 mt dw) for non–sandbar LCS in the Gulf of Mexico region. These reported landings do not exceed the available quota. However, since the status of this complex is unknown, any underharvest would not be applied to the 2009 adjusted base annual quota. Therefore, the 2009 proposed quota would be the adjusted base annual quota for non–sandbar LCS in the Gulf of Mexico region or 390.5 mt dw (860,896 lb dw), as established in Amendment 2 and its final rule.

3. Proposed 2009 Quotas for the Non–Sandbar LCS in the Atlantic Region

Pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 adjusted base annual quota for non–sandbar LCS in the Atlantic region is 187.8 mt dw (414,024 lb dw). As of September 15, 2008, preliminary reported landings were at 63.2 percent (118.6 mt dw) for non–sandbar LCS in the Atlantic region. These landings do not exceed the available quota. However, since the status of this complex is unknown, any underharvest would not be applied to the 2009 adjusted base annual quota. Therefore, the 2009 proposed quota would be the adjusted base annual quota for non–sandbar LCS in the Atlantic region or 187.8 mt dw (414,024 lb dw), as established in Amendment 2 and its final rule.

4. Proposed 2009 Quotas for SCS and Pelagic Sharks

Pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 annual commercial quotas for small coastal sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 454 mt dw (1,000,888 lb dw), 273 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488 mt dw (1,075,856 lb dw), respectively. This proposed rule does not propose any changes to these overall annual commercial quotas.

As of September 15, 2008, preliminary reported landings of SCS, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) were at 34.1 percent (154.7 mt dw), 0.2 percent (0.6 mt dw), 52.9 percent (0.9 mt dw), and 21.2 percent (103.5 mt dw), respectively. These landings do not exceed the available quotas. However, under 50 CFR 635.27(b)(1)(vii)(A), because the individual species, complexes, or species within a complex have been determined to be either overfished, overfished with overfishing occurring, or have an unknown status, underharvests for these species and/or complexes would not be applied to the 2009 quotas. Therefore, the 2009 proposed quotas would be the annual quotas for SCS, blue sharks, porbeagle sharks, and pelagic sharks (other than blue and porbeagle sharks) (454 mt dw (1,000,888 lb dw), 273 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488 mt dw (1,075,856 lb dw), respectively).

Proposed Fishing Season Notification for the 2009 Atlantic Commercial Shark Fishing Season

The 2009 Atlantic commercial shark fishing season for non–sandbar LCS, sandbar sharks, SCS, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is proposed to open upon the effective date of the final rule for this action. The fishery will remain open until December 31, 2009, unless NMFS calculates that the fishing season landings for sandbar shark, non–sandbar LCS, SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) has reached, or is projected to reach, 80 percent of the available quota. At that time, consistent with 50 CFR 635.27(b)(1), NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for the shark species group and, for non–sandbar LCS, region would remain closed, even across fishing years, consistent with 50 CFR 635.28(b)(2).

Request for Comments

Comments on this proposed rule may be submitted via email, mail, or fax. NMFS solicits comments on this proposed rule by November 26, 2008 (see **DATES** and **ADDRESSES**).

Classification

This proposed rule is published under the authority of the Magnuson–Stevens Act, 16 U.S.C. 1801 *et seq.* Consistent with 50 CFR 635.27(b)(1)(vii), the purpose of this action is to adjust the Atlantic shark annual quotas based on over– and/or underharvests from the 2008 commercial shark fishing season. This proposed rule will not increase the overall quotas or landings for non–sandbar LCS, sandbar sharks, SCS, blue, porbeagle, or pelagic sharks (other than porbeagle or blue sharks), and is not expected to increase fishing effort or protected species interactions.

On July 24, 2008, NMFS published a final rule (73 FR 35778, corrected at 73 FR 40658) for Amendment 2 to the 2006 Consolidated HMS FMP that established adjusted base annual quotas for non–sandbar LCS and sandbar sharks. The final rule also established annual quotas for SCS, porbeagle sharks, blue sharks, and pelagic sharks (other than porbeagle or blue sharks). A final regulatory flexibility analysis (FRFA) conducted for the final rule for Amendment 2 to the Consolidated HMS FMP indicated that, as of October 2007, there were approximately 231 directed commercial shark permit holders, 296 incidental commercial shark permit holders, and 269 Atlantic shark dealer permit holders, all of which are considered small entities according to the Small Business Administration's standard for defining a small entity (5 U.S.C. 603(b)(3)). As of 2008, there were approximately 214 directed commercial shark permit holders, 285 incidental commercial shark permit holders, and 128 commercial shark dealers. The FRFA concluded that the economic impacts on these small entities, resulting from adjusting the quotas for under– or overharvests in subsequent years via proposed and final rulemaking, were expected to be minimal.

However, the FRFA did expect negative economic impacts based on the new quotas and retention limits established in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP. Amendment 2 to the 2006 Consolidated HMS FMP estimated that, based on 2006 ex–vessel prices, vessels operating within the research fishery could make $437,963 in gross revenues from sandbar and non–sandbar LCS landings. Since 5 to 10 vessels were anticipated to participate in the research fishery, NMFS estimated that the average gross revenues per vessel on sandbar shark and non–sandbar LCS landings would range from $87,593 (*i.e.*, $437,963 / 5 vessels) to $43,796 (*i.e.*, $437,963 / 10 vessels). Based on the quotas established outside the shark research fishery, it was estimated that vessels operating outside the research

fishery could expect gross revenues of $516,285 in the Atlantic region and $1,273,269 in the Gulf of Mexico region from non–sandbar LCS landings, based on 2006 ex–vessel prices. In total, vessels operating within, and outside, of the research fishery were expected to have gross revenues of $2,227,517 in sandbar and non–sandbar LCS landings. This was a 55–percent reduction in gross revenues from sandbar sharks and non–sandbar LCS under the status quo (gross revenues based on directed and incidental permit holders' landings prior to the implementation of Amendment 2 to the 2006 Consolidated HMS FMP were $4,903,001).

This proposed rule would not change the overall adjusted base annual non–sandbar LCS and sandbar shark quotas nor would it change the annual quotas for SCS, blue, porbeagle, or pelagic sharks (other than porbeagle or blue sharks) established in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP, or implement any new management measures not previously considered, and is not expected to increase fishing effort or protected species interactions. This proposed rule would adjust the quotas for each species/species complex based on any over– and/or underharvests from the 2008 Atlantic commercial shark fishing season consistent with 50 CFR 635.27(b)(1)(vii).

Since the 2009 proposed quotas for non–sandbar LCS, sandbar sharks, SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) would be the same as those implemented in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP, there are no expected economic impacts to fishermen other than those already analyzed in Amendment 2 to the 2006 Consolidated HMS FMP. Thus, the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities beyond those considered in Amendment 2 to the 2006 Consolidated HMS FMP and its final rule (73 FR 35778, corrected at 73 FR 40658).

This proposed rule has been determined to be not significant for purposed of Executive Order 12866.

Dated: October 21, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–25557 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 208

Monday, October 27, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 22, 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: Select Agent Registration.

OMB Control Number: 0579–0213.

Summary of Collection: The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 were signed into law June 12, 2002. This law is designed to prevent, prepare for and respond to bioterrorism and other public health emergencies. The law requires individuals possessing agents or toxins deemed a severe threat to animal or plant health, or to animal or plant products, to be registered with the Secretary of Agriculture unless they have been specifically exempted. The registration process entail the use of a number of separate forms designed to obtain critical information concerning individuals or facilities in possession of certain agents or toxins, as well as the specific characteristics of the agents or toxins—including name, strain, and genetic information.

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) will collect information to determine the biosafety level of an entity as well as the entity's biosecurity situation. The collected information will also be used to ensure that appropriate safeguard, containment, and disposal requirements commensurate with the risk of the agent or toxin are present at the entity, thus preventing access to such agents and toxins for use in domestic or international terrorism. If the information were not collected, APHIS efforts to more aggressively prevent a bioterrorism event in the United States would be compromised.

Description of Respondents: Business or other for profit; State, Local and Tribal Government; Not-for-profit institutions.

Number of Respondents: 655.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,268.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–25534 Filed 10–24–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0113]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The meeting will be held on January 28, 2009, from 1:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Georgia World Congress Center, 285 Andrew Young International Boulevard, NW., Atlanta, GA.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1498 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, the Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference.

Topics for discussion at the upcoming meeting include:

1. Pilot project for compartmentalization;
2. Rapid assay for *Salmonella enteritidis*;
3. Notifiable avian influenza reporting; and
4. Notifiable avian influenza indemnification.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the discussions during the meeting. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed

under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. APHIS–2008–0113 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 21st day of October 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–25513 Filed 10–24–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Roadless Area Conservation National Advisory Committee will meet in Washington, DC. The purpose of the meeting is to discuss the proposed rule for the management of roadless areas on National Forest System lands in the State of Colorado and to discuss other related roadless area matters.

DATES: The meeting will be held November 18 and November 19, 2008, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Forest Service, Sidney R.Yates Building, 201 14th Street, SW., Washington, DC. Written comments concerning this meeting should be addressed to Forest Service, U.S. Department of Agriculture, EMC, Jessica Call, 201 14th Street, SW., Mailstop 1104, Washington, DC 20024. Comments may also be sent via e-mail to *jessicacall@fs.fed.us,* or via facsimile to 202–205–1012. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Service, Sidney R.Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to 202–205–1056 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jessica Call, Roadless Area Conservation National Advisory Committee (RACNAC) Coordinator, at *jessicacall@fs.fed.us* or 202–205–1056.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and interested parties are invited to attend; building security requires you to provide your name to Jessica Call, RACNAC Coordinator by November 14, 2008. You will need photo identification to enter the building.

While meeting discussion is limited to Forest Service staff and Committee members, the public will be allowed to offer written and oral comments for the Committee's consideration. Attendees wishing to comment orally will be allotted a specific amount of time to speak during a public comment period. To offer oral comment, please contact the RACNAC Coordinator at 202–205–1056.

Dated: October 21, 2008.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E8–25563 Filed 10–24–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection for Field Crop Production. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by December 26, 2008 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0002, by any of the following methods:

- E-mail: *omboffice@nass.usda.gov.* Include docket number above in the subject line of the message.
- Fax: (202) 720–6396.
- Mail: Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- Hand Delivery/Courier: Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Field Crop Production.

OMB Control Number: 0535–0002.

Expiration Date of Approval: March 31, 2009.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Field Crop Production Program consists of probability field crop surveys and supplemental panel surveys. The panel surveys capture unique crop characteristics such as the concentration of crops in localized geographical areas. These surveys are extremely valuable for commodities where acreage and yield are published at the county level. The Field Crop Production Program was last approved by the Office of Management and Budget in September of 2008 for a 6-month emergency approval period. The 2008 Farm Bill (Pub. L. 110–2465) required changes be made to the previous docket which had an expiration date of December 31, 2009. The current expiration date is March 31, 2009. NASS intends to request that the survey be approved for another 3 years.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

Estimate of Burden: Public reporting burden for this information collection is based on 14 individual surveys with expected responses of 5–80 minutes and frequency of 1–40 times per year. Estimated number of responses per respondent is 1.31.

Respondents: Farms.

Estimated Number of Respondents: 625,000.

Estimated Total Annual Burden on Respondents: 170,000 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (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.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, October 10, 2008.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E8–25565 Filed 10–24–08; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 55–2008]

Foreign-Trade Zone 26—Atlanta, GA, Area; Application for Reorganization/Expansion; Correction

The **Federal Register** notice (73 FR 60676–60677, 10/14/08) describing the application to reorganize and expand Foreign-Trade Zone 26 in the Atlanta area should be corrected as follows: Proposed Site 12 (241 acres)—within the 1,800-acre Callaway South Industrial Park, located at Pegasus Parkway and South Loop Extension off of Interstate 85, LaGrange. The application otherwise remains unchanged.

Dated: October 21, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–25576 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1582]

Expansion of Foreign-Trade Zone 227; Durant, OK

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Rural Enterprises of Oklahoma, Inc., grantee of Foreign-Trade Zone 227, submitted an application to the Board for authority to expand its zone to include two sites in Carter County located at the Ardmore Industrial Airpark (Site 2—2,790 acres) in Springer and at the Westport Industrial Park (Site 3—122 acres) in Ardmore, adjacent to the Dallas/Fort Worth Customs and Border Protection port of entry (FTZ Docket 7–2008, filed 2/8/08);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 10421, 2/27/08) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 227 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project.

Signed at Washington, DC, this 16th day of October, 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–25579 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1583]

Expansion of Foreign-Trade Zone 38; Spartanburg County, SC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, submitted an application to the Board for authority to expand its zone to include five additional sites (684 acres total) located at the Riverbend Business Center in Spartanburg (Site 8—88 acres), at the Corporate Center I–85 and the Bryant Business Center in Spartanburg (Site 9—207 acres), at the Interchange Commerce Center in Spartanburg (Site 10—334 acres), at the Caliber Ridge Industrial Park in Greer (Site 11—51 acres), and at Industrial Warehousing in Duncan (Site 12—4 acres), and to reorganize its zone by restoring zone status to 19 acres within *Site 3* in Duncan, granting zone status on a permanent basis to 19 acres at *Temporary Site T–1* in Duncan (to become *Site 7*), and making permanent the current temporary location of *Site 1* at the Global Trade Center in Greenville, within the Greenville-Spartanburg Customs and Border Protection port of entry (FTZ Docket 53–2007, filed 12/20/07);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 1319, 01/08/08) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand and reorganize FTZ 38 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, subject to the Board's 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on October 31, 2013 for sites 8, 9, 10, 11 and 12 where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 16th day of October, 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–25580 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[05–BIS–23]

In the Matter of: NEAZ Trading Corporation 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, Respondent

Final Decision and Order

This matter is before me upon a Recommended Decision and Order (''RDO'') of an Administrative Law Judge (''ALJ'')

In a charging letter issued on December 15, 2005, the Bureau of Industry and Security (''BIS'') alleged that Respondent, NEAZ Trading Corporation, committed two violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2008) (''Regulations'')),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. § 240 1–2420 (2000)) (''Act'').[2]

The charging letter included a charge that was based on actions taken by NEAZ to evade licensing requirements governing exports of items subject to the Regulations, specifically, the export of items subject to the Regulations to a Pakistani organization listed on BIS's Entity List. Specifically, Charge One alleged as follows:

Charge 1 (15 CFR 764.2(h)—Actions Taken with Intent to Evade the Regulations)

On or about April 27, 2002, NEAZ, through its operations specialist, took actions with the intent to evade the U.S. Government's licensing requirements for exports to Pakistan. Specifically, NEAZ took actions, including but not limited to, the submission of false information to a freight forwarder in connection with an export of components for an online chemical monitoring system, items subject to the Regulations (EAR99 and 4A994), from the United States to the Karachi Nuclear Power Plant (''KANUPP'') in Karachi, Pakistan via the United Arab Emirates (UAE). NEAZ provided shipping information representing that the consignee was in the UAE but omitting the final destination for the items. The purpose of NEAZ's actions was to conceal the end-user, KANUPP, a Pakistani organization on the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations and for which a Department of Commerce export license was required by section 744.1 of the Regulations. In so doing, NEAZ committed one violation of section 764.2(h) of the Regulations.[3]

In accordance with section 766.3(b)(l) of the Regulations, on December 15, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to NEAZ at its last known address, which is in Pakistan. Although BIS did not receive a signed return mail receipt for the letter, the charging letter was delivered no later than on or about February 16, 2006. On or about that date, Yasmin Ahmed, NEAZ's Chief Operating Officer and the person at NEAZ to whose attention the NEAZ charging letter was addressed, telephoned the BIS attorney named in the charging letter to discuss that letter, as well as the charging letter served in a related administrative proceeding also initiated by BIS on December 15, 2005, In the Matter of Yasmin Ahmed (Docket No. 05–BIS–24). Ms. Ahmed had possession of the NEAZ charging letter by the date of that telephone call; otherwise, she would not have known the name or had direct contact information for BIS's attorney or been able to discuss the charging letter with BIS. To date, NEAZ has not filed an answer to the charging letter with the AU, as required by the Regulations.

Under section 766.6(a) of the Regulations, the ''respondent must answer the charging letter within 30 days after being served with notice of issuance'' of the charging letter. Section 766.7(a) of the Regulations provides that the ''[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter,'' and that ''on BIS's motion and without further notice to the respondent, [the AU] shall find the facts to be as alleged in the charging letter[.]''

In accordance with section 766.7 of the Regulations, and because more than thirty days had passed since NEAZ had been served with the charging letter, BIS filed a Motion for Default Order that was received by the AU on July 15, 2008. This Motion for Default Order recommended that NEAZ be denied export privileges under the Regulations for a period of seven years.

On September 16, 2008, based on the record before him, the AU issued a RDO in which he found NEAZ in default, found the facts to be as alleged in Charge One of the charging letter, and held that NEAZ had committed the one violation of section 764.2(h) of the Regulations. The AU also recommended the penalty of denial of NEAZ's export privileges for seven years.

The ALJ's RDO, together with the entire record in this case, has been referred to me for final action under section 766.22 of the Regulations. I find that the record supports the AU's findings of fact and conclusions of law. I also find that the penalty recommended by the AU is appropriate, given the nature of the violation and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the ALJ's RDO.

Accordingly, it is therefore ordered,

First, that, for a period of seven (7) years from the date this Order is published in the **Federal Register**, NEAZ Trading Corporation, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, and when acting for or on behalf of NEAZ Trading Corporation, its representatives, agents, assigns and employees (hereinafter collectively referred to as the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

[1] The charged violations occurred during the 2002 period. The Regulations governing the violations at issue are found in the 2000–2002 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2000–2002)). The 2008 Regulations establish the procedures that apply to this matter.

[2] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 FR 46,137 (August 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[3] The charging letter included a second evasion charge, Charge Two, relating to BIS's export control documentation filing requirements. By Notice of Withdrawal filed with the Administrative Law Judge simultaneously with its Motion for Default Order, BIS provided notice that it was withdrawing Charge Two.

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the AU's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: October 16, 2008.

Mario Mancuso,

Under Secretary of Commerce for Industry and Security.

United States Department of Commerce Bureau of Industry and Security

In the Matter of: NEAZ Trading Corporation, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, Respondent.

Recommended Decision and Order

On December 15, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (BIS), issued a charging letter initiating this administrative enforcement proceeding against NEAZ Trading Corporation (NEAZ). The charging letter alleged NEAZ committed two violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2008)) (Regulations),[1] issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the Act).[2] In accordance with § 766.7 of the Regulations, BIS has moved for the issuance of an Order of Default against NEAZ in connection with Charge I in the charging letter, as NEAZ has failed to file an answer to the allegation in the charging letter issued by BIS within the time period required by the Regulations.[3]

A. Legal Authority for Issuing an Order of Default

Section 766.7 of the Regulations states that upon motion by BIS, the Court shall find a respondent in default if the respondent fails to properly file a timely answer to a charging letter. That section, entitled Default, provides in pertinent part:

Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.

15 CFR 766.7 (2006).

Pursuant to § 766.6 of the Regulations, a respondent must file an answer to the charging letter ''within 30 days after being served with notice of the issuance of the charging letter'' initiating the proceeding.

B. Service of the Notice of Issuance of Charging Letter

In this case, BIS served notice of issuance of the charging letter in accordance with § 766.3(b)(1) of the Regulations when it sent a copy of the charging letter by registered mail to NEAZ at its last known address on December 15, 2005. BIS did not receive a return mail receipt for the letter. To date, NEAZ has failed to file an answer to the charging letter as required by section 766.6 of the Regulations. On or about February 16, 2006, Yasmin Ahmed, NEAZ's Chief Operating Officer (the person to whose attention the NEAZ letter was directed) telephoned BIS attorney of record, Parvin Huda. Since Ms. Ahmed contacted BIS on February 16, 2006, Ms. Ahmed must have been in possession of the Charging Letter or she would not have known Ms. Huda's contact information. Clearly 30 days has passed since Ms. Ahmed received the charging letter. Accordingly, NEAZ is in default.

C. Summary of Violations Charged

The charging letter filed by BIS included two charges. BIS provided notice that it was withdrawing the second charge, in its Notice of Withdrawal filed with the Administrative Law Judge simultaneously with its Motion for Default Order. BIS's Motion for Default Order covered the one remaining charge, Charge 1, which alleged that on or about April 27, 2002, NEAZ, through its operations specialist, took actions with the intent to evade the U.S. Government's licensing requirements for exports to Pakistan. These actions included, but were not limited to, the submission of false information to a freight forwarder in connection with an export of components for an online chemical monitoring system, items subject to the

[1] The violations charged occurred during 2002 period. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 CFR Parts 730–774 (2002)). The 2008 Regulations establish the procedures that apply to this matter.

[2] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 FR 46137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[3] In a Notice of Withdrawal filed simultaneously with its Motion For Default Order, BIS provided notice to the Administrative Law Judge that it was withdrawing Charge 2.

Regulations (EAR99 [4] and ''ECCN 4A994'' [5]), from the United States to the Karachi Nuclear Power Plant (''KANUPP'') in Karachi, Pakistan, via the United Arab Emirates (UAE). NEAZ provided shipping information representing that the consignee was in the UAE but omitting the final destination for the items. BIS alleges the purpose of NEAZ's actions was to conceal the end-user, KANUPP, a Pakistani organization on the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations and for which a Department of Commerce export license was required by section 744.1 of the Regulations.

D. Penalty Recommendation

[REDACTED SECTION]

E. Conclusion

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. See 15 CFR 766.22(c).

Joseph N. Ingolia,
Chief Administrative Law Judge, United States Coast Guard.

Done and dated 16th of September, 2008, Baltimore, Maryland.

Certificate of Service

I hereby certify that I have served the foregoing RECOMMENDED DECISION AND ORDER upon the following party in this proceeding at the addresses indicated below by First Class Mail to:

Parvin R. Huda, Senior Counsel, Attorneys for Bureau of Industry and Security, Office of Chief Counsel, For Industry and Security, U.S. Department of Commerce, Room H–3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230, (202) 482–5301.

NEAZ Trading Corporation, 612 Business Centre, Mumtaz Hasan Road, Off 1.1 Chundrigar Road, Karachi, Pakistan.

Dated on September 18, 2008, Baltimore, Maryland.

Debra M. Gundy,
Paralegal Specialist, Administrative Law Judges Office, U.S. Coast Guard.

[FR Doc. E8–25353 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DT–M

[4] EAR 99 is a designation for items subject to the Regulations that are not listed on the Commerce Control List.

[5] ''ECCN'' refers to ''Export Control Classification Number.'' See Supp. ito 15 CFR 774.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[05–BIS–24]

In the Matter of: Yasmin Ahmed, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, Respondent

Final Decision and Order

This matter is before me upon a Recommended Decision and Order (''RDO'') of an Administrative Law Judge (''ALJ'').

In a charging letter issued on December 15, 2005, the Bureau of Industry and Security (''BIS'') alleged that Respondent, Yasmin Ahmed,[1] committed four violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2008) (''Regulations'')),[2] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (''Act'').[3]

The charging letter included a total of four charges based on Yasmin Ahmed's actions as a sales representative of Advance Technical System (''ATS'') of Dubai, United Arab Emirates (''UAE'') in connection with unlawful shipments of U.S.-origin radar parts made to Pakistan through the UAE. Specifically, the charging letter alleged as follows:

Charge 1 (15 CFR 764.2(b)—Causing the Filing of a False Statement on Shipper's Export Declaration as to the Ultimate Destination)

On or about December 18, 2000, Ahmed caused the filing of a false statement with the U.S. Government in violation of the Regulations. Specifically, in connection with the export of radar parts (''parts''), items subject to the Regulations (''EAR99'') [4], from the United States to Pakistan via the UAE, Ahmed submitted an end-user certificate, DSP Form 83,[5] to the exporter that falsely stated that the Bangladeshi Air Force was the end-user of the parts. The exporter relied on the end-user information submitted by Ahmed in completing a Shipper's Export Declaration (SED) for the export of the parts which falsely stated that the country of ultimate destination was Bangladesh. The actual country of ultimate destination was Pakistan. By providing false end-user information to the exporter, Ahmed committed one violation of section 764.29([b]) [6] of the Regulations.

Charge 2 (15 CFR 764.2(c)—Attempting to Cause a Violation of the Regulations by Submitting False End-User Information to Exporter)

On or about April 16, 2002, Ahmed attempted to cause a violation of the Regulations by submitting a false end-user certificate to the exporter in connection with the export of parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The certificate stated that the Bangladeshi Air Force was the end-user of the parts. The actual country of ultimate destination was Pakistan. The exported relied on the end-user information submitted by Ahmed in completing an airway bill listing Bangladesh as the ultimate destination of the parts.

In completing the SED for the export based on a consultation of the airway bill, however, the freight forwarder incorrectly listed UAE as the country of ultimate destination. By providing false end-user information to the exporter, Ahmed attempted to cause a violation of the Regulations. In so doing, Ahmed committed one violation of section 764.2(c) of the Regulations.

Charge 3 (15 CFR 764.2(h)—Actions Taken with Intent to Evade the Provisions of the Regulations)

In connection with the export described in Charge 1 above, Ahmed took actions with the intent to evade the provisions of the Regulations. Specifically, Ahmed took actions, including but not limited to, obtaining false signatures from a purported end-user and representative of ATS for

[1] Yasmin Ahmed was also known as Fatimah Mohammad and Yasmin Ahmed Tariq during the period in which the charged violations occurred.

[2] The charged violations occurred during the 2000–2002 period. The Regulations governing the violations at issue are found in the 2000–2002 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2000–2002)). The 2008 Regulations establish the procedures that apply to this matter.

[3] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 FR 46,137 (August 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[4] EAR 99 is a designation for items subject to the Regulations that are not listed on the Commerce Control list.

[5] The DSP Form 83, ''Nontransfer and Use Certificate,'' is used by the State Department in connection with the export of munitions items subject to the State Department's export controls. The Respondent used it here in connection with items subject to the Regulations.

[6] Due to a typographical error, the charging letter incorrectly referred to section 764.2(g) in the last sentence of Charge One, rather than section 764.2(b). As indicated by Charge One's heading and by its content, the last sentence should have referred to 764.2(b), the violation provision that corresponds to the causing language that comprises the substance of the charge. This typographical error does not prejudice the Respondent, as it is clear that the intended reference was to section 764.2(b).

inclusion on an end-user certificate submitted to an exporter in connection with the export of parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The purpose of securing the false signatures was to prepare a false end-user certificate concealing the actual destination for the parts, Pakistan. The exporter relied on the information provided in the end-user certificates in preparing an SED which falsely stated the country of ultimate destination. In so doing, Ahmed committed one violation of section 764.2(h) of the Regulations.

Charge 4 (15 CFR 764.2(h)—Actions Taken with Intent to Evade the Provisions of the Regulations)

In connection with the export described in Charge 2 above, Ahmed took actions with the intent to evade the provisions of the Regulations. Specifically, Ahmed took actions, including but not limited to, obtaining false signatures from a purported end-user and representative of ATS for inclusion on an end-user certificate submitted to an exporter in connection with the export of parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The purpose of obtaining the false signatures was to prepare a false end-user certificate concealing the actual destination for the parts, Pakistan. The exporter relied on the information provided in the end-user certificates in preparing an SED which falsely stated the country of ultimate destination. In so doing, Ahmed committed one violation of section 764.2(h) of the Regulations.

In accordance with section 766.3(b)(1) of the Regulations, on December 15, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to Yasmin Ahmed at her last known address, which is in Pakistan. Although BIS did not receive a signed return mail receipt for the letter, the charging letter was delivered no later than on or about February 16, 2006. On or about that date, Yasmin Ahmed telephoned the BIS attorney named in the charging letter to discuss that letter, as well as the charging letter in a related administrative proceeding also initiated by BIS on December 15, 2005, In the Matter of NEAZ Trading Corporation (Docket No. 05–BIS–23). Ms. Ahmed had possession of the Yasmin Ahmed charging letter by the date of that telephone call; otherwise, she would not have known the name or direct contact information for BIS's attorney or been able to discuss the charging letter with BIS. To date, however, Yasmin Ahmed has not filed an answer to the charging letter with the AU, as required by the Regulations.

Under section 766.6(a) of the Regulations, the ''respondent must answer the charging letter within 30 days after being served with notice of issuance'' of the charging letter. Section 766.7(a) of the Regulations provides that the ''[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter,'' and that ''on BIS's motion and without further notice to the respondent, [the AU] shall find the facts to be as alleged in the charging letter.''

In accordance with section 766.7 of the Regulations, and because more than thirty days had passed since Ahmed had been served with the charging letter, BIS filed a Motion for Default Order that was received by the AU on July 15, 2008. This Motion for Default Order recommended that Ahmed be denied export privileges under the Regulations for a period of seven years.

On September 16, 2008, based on the record before him, the AU issued a RDO in which he found Yasmin Ahmed in default, found the facts to be as alleged in the charging letter, and held that Ahmed had committed the four violations alleged in the charging letter. The AU also recommended the penalty of denial of Yasmin Ahmed's export privileges for seven years.

The RDO, together with the entire record in this case, has been referred to me for final action under section 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law with one modification. With respect to Charge One, I modify the RDO to the extent it states at one point that Yasmin Ahmed committed one violation ''of section 764.2(g) of the Regulations'', RDO at 3, because the violation set forth in Charge One, as indicated by its heading and the content of that charging paragraph, is a violation under section 764.2(b) of the Regulations. See note 6, supra. I also find that the penalty recommended by the AU is appropriate, given the serious nature of the violations and the importance of preventing future unauthorized exports or similar conduct in violations of the Regulations.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the RDO with the one modification regarding Charge One that is described above.

Accordingly, it is therefore ordered:

First, that, for a period of seven (7) years from the date this Order is published in the **Federal Register**, Yasmin Ahmed, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, and when acting for or on behalf of Yasmin Ahmed, her representatives, agents, assigns and employees (hereinafter collectively referred to as the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or

controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the AU's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: October 16, 2008.

Mario Mancuso,

Under Secretary of Commerce for Industry and Security.

United States Department of Commerce Bureau of Industry and Security

In the Matter of: Yasmin Ahmed, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan. Respondent.

Recommended Decision and Order

On December 15, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (BIS), issued a charging letter initiating this administrative enforcement proceeding against Yasmin Ahmed.[1] The charging letter alleged that Yasmin Ahmed committed four violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730 774 (2008)) (the Regulations),[2] issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the Act).[3] In accordance with § 766.7 of the Regulations, BIS moved for the issuance of an Order of Default against Yasmin Ahmed because Ms. Ahmed failed to file an answer to the allegations in the charging letter issued by BIS within the time period required by the Regulations.

A. Legal Authority for Issuing an Order of Default

Section 766.7 of the Regulations states that upon motion by BIS, the Court shall enter a default if a respondent fails to properly file a timely answer to a charging letter. That section, entitled Default, provides in pertinent part as follows:

Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.

15 CFR 766.7 (2008).

Pursuant to Section 766.6 of the Regulations, a respondent must file an answer to the charging letter ''within 30 days after being served with notice of the issuance of the charging letter'' initiating the proceeding. 15 CFR 766.6 (2008).

B. Service of the Notice of Issuance of Charging Letter

In this case, BIS served notice of issuance of the charging letter in accordance with § 766.3(b)(l) of the Regulations by sending a copy of the charging letter by registered mail to Yasmin Ahmed at her last known address on December 15, 2005. BIS did not receive a return mail receipt for the letter. To date, Respondent has failed to file an answer to the charging letter as required by section 766.6 of the Regulations. On or about February 16, 2006, Yasmin Ahmed, telephoned the BIS attorney named in the charging letter. Since Ms. Ahmed contacted BIS on February 16, 2006, Ms. Ahmed must have been in possession of the Charging Letter or she would not have known the BIS attorney's contact information. Clearly 30 days has passed since Ms. Ahmed received the charging letter. Accordingly, Yasmin Ahmed is in default.

C. Summary of Violations Charged

The charging letter filed and served in this matter included a total of four charges based on Yasmin Ahmed's actions as a sales representative of Advance Technical System (ATS) of Dubai, United Arab Emirates (UAE), in connection with shipments of U.S. origin items to Pakistan. Charge I of the charging letter alleged that on or about December 18, 2000, Yasmin Ahmed caused the filing of a false statement with the U.S. Government in connection with the export of radar parts, items subject to the Regulations,[4] from the United States to Pakistan via the UAE. Yasmin Ahmed submitted an end-user certificate, DSP Form 83,[5] to the exporter that falsely stated that the Bangladesh Air Force was the end-user of the parts. The exporter relied on the end-user information submitted by Yasmin Ahmed in completing a Shipper's Export Declaration (SED) for the export of the parts that falsely stated that the country of ultimate destination was Bangladesh. The actual country of ultimate destination was Pakistan. By providing false end-user information to the exporter, Yasmin Ahmed committed one violation of section 764.2(g) of the Regulations.

Second, the charging letter alleged that on or about April 16, 2002, Yasmin Ahmed attempted violate the Regulations by submitting a false end-user certificate to the exporter in connection with the export of radar parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The certificate stated that the Bangladesh Air Force was the end user of the radar parts. The actual country of ultimate destination was Pakistan. The exporter relied on the end-user information submitted by Yasmin Ahmed in completing an airway bill listing Bangladesh as the ultimate destination of the parts. In completing the SED for the export based on a consultation of the airway bill, the freight forwarder incorrectly listed UAE as the country of ultimate destination. By providing false end-user information to the exporter, Yasmin Ahmed attempted to cause a violation of the Regulations, namely, the filing of a SED with false end-user information, and thereby violated section 764.2(c) of the Regulations.

Charge 3 of the charging letter alleged that in connection with the December 18, 2000, transaction (described in Charge 1 of the charging letter), Yasmin Ahmed took actions with the intent to evade the provisions of the Regulations. Specifically, she took actions, including but not limited to, obtaining false signatures from a purported end-user who was actually a representative of ATS for inclusion on an end-user certificate submitted to an exporter in connection with the export of radar parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The purpose of securing the false signatures was to prepare

[1] Yasmin Ahmed was also known as Fatimah Mohammad and Yasmin Ahmed Tariq during the period in which the charged violations occurred.

[2] The charged violations occurred during the 2000–2002 period. The Regulations governing the violations at issue are found in the 2000–2002 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2000–2002)). The 2008 Regulations establish the procedures that apply to this matter.

[3] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized by Public Law No. 106–508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 FR 46137 (Aug. 16, 2007)), has continued the Regulations in effect under IEEPA.

[4] These parts are designated as ''EAR 99,'' a designation for items subject to the Regulations that are not listed on the Commerce Control List.

[5] The DSP Form 83, ''Nontransfer and Use Certificate,'' is used by the State Department in connection with the export of munitions items subject to the State Department's export controls. In this instance, the Respondent used it to conceal the end-user of an item that was subject to the EAR.

a false end-user certificate concealing the actual destination for the radar parts, Pakistan. The exporter relied on the information provided in the end-user certificates in preparing a SED that falsely stated the country of ultimate destination as Bangladesh. In so doing, Yasmin Ahmed committed one violation of section 764.2(h) of the Regulations.

Finally, in connection with the April 16, 2002, transaction described in Charge 2 of the charging letter, Yasmin Ahmed took actions with the intent to evade the provisions of the Regulations. Specifically, Yasmin Ahmed took actions, including but not limited to, obtaining false signatures from a purported end-user who was actually a representative of ATS for inclusion on an end-user certificate submitted to an exporter in connection with the export of radar parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The purpose of obtaining the false signatures was to prepare a false end-user certificate concealing the actual destination for the radar parts, Pakistan. The exporter relied on the information provided in the end-user certificates in preparing a SED which falsely stated the country of ultimate destination as Bangladesh. In so doing, Yasmin Ahmed committed one violation of section 764.2(h) of the Regulations.

D. Penalty Recommendation

[REDACTED SECTION]

E. Conclusion

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. See 15 CFR 766.22(c).

Hon. Joseph N. Ingolia,
Chief Administrative Law Judge, United States Coast Guard.

Done and Dated 16th September, 2008, Baltimore, Maryland.

Certificate of Service

I hereby certify that I have served the foregoing RECOMMENDED DECISION AND ORDER upon the following party in this proceeding at the addresses indicated below by First Class Mail to:

Parvin R. Huda, Senior Counsel, Attorneys for Bureau of Industry and Security, Office of Chief Counsel For Industry and Security, U.S. Department of Commerce, Room H–3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230, (202) 482–5301.

Yasmin Ahmed, 612 Business Centre, Mumtaz Hasan Road, Off I.I Chundrigar Road, Karachi, Pakistan.

Dated on September 18, 2008, Baltimore, Maryland.

Debra M. Gundy,

Paralegal Specialist, Administrative Law Judges Office, U.S. Coast Guard.

[FR Doc. E8–25351 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 0810071328–81331–01]

Impact of Implementation of the Chemical Weapons Convention on Commercial Activities Involving ''Schedule 1'' Chemicals Through Calendar Year 2008

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the impact that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving ''Schedule 1'' chemicals during calendar year 2008. The purpose of this notice of inquiry is to collect information to assist BIS in its preparation of the annual certification to the Congress, which is required under Condition 9 of Senate Resolution 75, April 24, 1997, in which the Senate gave its advice and consent to the ratification of the Chemical Weapons Convention.

DATES: Comments must be received by November 26, 2008.

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

- E-mail: *wfisher@bis.doc.gov*. Include the phrase ''Schedule 1 Notice of Inquiry'' in the subject line;
- Fax: (202) 482–3355 (Attn: Willard Fisher);
- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For questions on the Chemical Weapons Convention requirements for ''Schedule 1'' chemicals, contact James Truske, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–1001. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

In providing its advice and consent to the ratification of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC) (the Convention), the Senate included, in Senate Resolution 75 (S. Res. 75, April 24, 1997), several conditions to its ratification. Condition 9, titled ''Protection of Advanced Biotechnology,'' calls for the President to certify to Congress on an annual basis that ''the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1.'' On July 8, 2004, President Bush, by Executive Order 13346, delegated his authority to make the annual certification to the Secretary of Commerce.

The CWC is an international arms control treaty that contains certain verification provisions. In order to implement these verification provisions, the CWC established the Organization for the Prohibition of Chemical Weapons (OPCW). The CWC imposes certain obligations on countries that have ratified the Convention (i.e., States Parties), among which are the enactment of legislation to prohibit the production, storage, and use of chemical weapons, and the establishment of a National Authority to serve as the national focal point for effective liaison with the OPCW and other States Parties for the purpose of achieving the object and purpose of the Convention and the implementation of its provisions. The CWC also requires each State Party to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of the State Party are not engaged in activities prohibited under the CWC.

''Schedule 1'' chemicals consist of those toxic chemicals and precursors set forth in the CWC ''Annex on Chemicals'' and in Supplement No. 1 to part 712 of the Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710–722). The CWC identified these toxic chemicals and

precursors as posing a high risk to the object and purpose of the Convention.

The CWC restricts the production of ''Schedule 1'' chemicals for protective purposes to two facilities per State Party. The CWC Article-by-Article Analysis submitted to the Senate in Treaty Doc. 103–21 defined the term ''protective purposes'' to mean ''used for determining the adequacy of defense equipment and measures.'' Consistent with this definition, U.S. implementation, as authorized via Presidential Decision Directive (PDD) 70, December 17, 1999, assigned the responsibility to operate these two facilities to the Department of Defense (DOD), thereby precluding commercial production of ''Schedule 1'' chemicals for protective purposes in the United States. This action did not establish any limitations on ''Schedule 1'' chemical activities that are not prohibited by the CWC. However, the Department of Defense maintains strict controls on ''Schedule 1'' chemicals produced at its facilities in order to ensure the accountability and proper use of such chemicals, consistent with the object and purpose of the Convention.

The provisions of the CWC that affect commercial activities involving ''Schedule 1'' chemicals are implemented in the CWCR (see 15 CFR 712) and in the Export Administration Regulations (EAR) (see 15 CFR 742.18 and 15 CFR 745), both of which are administered by the Bureau of Industry and Security (BIS). Pursuant to CWC requirements, the CWCR restrict commercial production of ''Schedule 1'' chemicals to research, medical, or pharmaceutical purposes. The CWCR also contain other requirements and prohibitions that apply to ''Schedule 1'' chemicals and/or ''Schedule 1'' facilities. Specifically, the CWCR:

(1) Prohibit the import of ''Schedule 1'' chemicals from States not Party to the Convention (15 CFR 712.2(b));

(2) Require annual declarations by certain facilities engaged in the production of ''Schedule 1'' chemicals in excess of 100 grams aggregate per calendar year (i.e., declared ''Schedule 1'' facilities) for purposes not prohibited by the Convention (15 CFR 712.5(a)(1) and (a)(2));

(3) Require government approval of ''declared Schedule 1'' facilities (15 CFR 712.5(f));

(4) Provide that ''declared Schedule 1'' facilities are subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons (15 CFR 712.5(e) and 716.1(b)(1));

(5) Require 200 days advance notification of establishment of new ''Schedule 1'' production facilities producing greater than 100 grams aggregate of ''Schedule 1'' chemicals per calendar year (15 CFR 712.4);

(6) Require advance notification and annual reporting of all imports and exports of ''Schedule 1'' chemicals to, or from, other States Parties to the Convention (15 CFR 712.6, 742.18(a)(1) and 745.1); and

(7) Prohibit the export of ''Schedule 1'' chemicals to States not Party to the Convention (15 CFR 742.18(a)(1) and (b)(1)(ii)).

Request for Comments

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are significantly harmed by the limitations of the Convention on access to, and production of, ''Schedule 1'' chemicals as described in this notice, BIS is seeking public comments on any effects that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving ''Schedule 1'' chemicals during calendar year 2008. To allow BIS to properly evaluate the significance of any harm to commercial activities involving ''Schedule 1'' chemicals, public comments submitted in response to this notice of inquiry should include both a quantitative and qualitative assessment of the impact of the CWC on such activities.

Submission of Comments

All comments must be submitted to one of the addresses indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on November 26, 2008. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration, at (202) 482–1093, for assistance.

Dated: October 21, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–25561 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–201–805

Initiation of Antidumping Duty Changed Circumstances Review: Circular Welded Non–Alloy Steel Pipe from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Ternium México, S.A. de C.V. (''Ternium Mexico''), and pursuant to section 751(b) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.216 and 351.221(c)(3), the Department is initiating a changed circumstances review of the antidumping duty order on circular welded non–alloy steel pipe (''standard pipe'') from Mexico. This review will determine whether Ternium Mexico is the successor–in-interest to Hylsa, S.A. de C.V. (''Hylsa'').

EFFECTIVE DATE: October 27, 2008.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

Background

The Department published an antidumping duty order on standard pipe from Mexico on November 2, 1992. *See Notice of Antidumping Duty Orders: Certain Circular Welded Non–Alloy Steel Pipe from Brazil, the Republic of Korea (''Korea''), Mexico, and Venezuela*

and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non–Alloy Steel Pipe from Korea, 57 FR 49453 (November 2, 1992).

On September 3, 2008, Ternium Mexico filed a request for a changed circumstances review of the antidumping duty order on standard pipe from Mexico, claiming that Hylsa, the respondent in the original investigation, has changed its name to Ternium Mexico. Ternium Mexico requested that the Department determine whether it is the successor–in-interest to Hylsa, in accordance with section 751(b) of the Act, and 19 CFR 351.216. In addition, Ternium Mexico submitted documentation in support of its claim. In response to Ternium Mexico's request, the Department is initiating a changed circumstances review of this order.

Scope of the Order

The merchandise covered by this order is circular welded non–alloy steel pipes and tubes, of circular cross–section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low–pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load–bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load–bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in this order. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in this order.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. On September 3, 2008, Ternium Mexico submitted its request for a changed circumstances review. With this request, Ternium Mexico submitted certain information related to its claim that Hylsa changed its name to Ternium Mexico including information describing the acquisition of Hylsa by Ternium Luxembourg and the changes in Hylsa's operating and corporate structure immediately following that acquisition. On September 17, 2008, Allied Tube and Conduit (''petitioner'') submitted comments with respect to Ternium Mexico's submission. Ternium Mexico filed additional comments in response to those made by the petitioner on September 29, 2008. Based on the information Ternium Mexico submitted regarding a name change, the Department has determined that changed circumstances sufficient to warrant a review exist. *See* 19 CFR 351.216(d). In antidumping duty changed circumstances reviews involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip From Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) and *Certain Cut–to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 22847 (May 3, 2005) (''*Plate from Romania*''). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Plate from Romania*, 70 FR 22847. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999). Although Ternium Mexico submitted documentation related to its name change and some limited information regarding the four factors that the Department considers in its successor–in-interest analysis, it failed to provide complete supporting documentation for the four elements listed above that is sufficient for making the successor–in-interest determination without requesting additional information. Accordingly, the Department has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). Therefore, the Department is not issuing the preliminary results of its antidumping duty changed circumstances review at this time.

The Department will issue questionnaires requesting additional information for the review, and will publish in the **Federal Register** a notice of the preliminary results of the antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(2) and (4), and 19 CFR 351.221(c)(3)(i). The notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

During the course of this antidumping duty changed circumstances review, the cash deposit requirements for the subject merchandise exported and manufactured by Ternium Mexico will continue to be the rate established in the final results of the last administrative review for all other manufacturers and exporters not previously reviewed. *See Circular Welded Non–Alloy Steel Pipe*

From Mexico: Final Results of Antidumping Duty Administrative Review, 66 FR 21311 (April 30, 2001). The cash deposit will be altered, if warranted, pursuant only to the final results of this review.

This notice of initiation is in accordance with section 751(b)(1) of the Act, 19 CFR 351.216(b) and (d), and 19 CFR 351.221(b)(1).

Dated: October 20, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–25553 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–868

Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Circumvention of Antidumping Duty Order

SUMMARY: We preliminarily determine that imports from the People's Republic of China (''PRC'') of folding metal tables with legs connected by cross–bars, so that the legs fold in sets, and otherwise meeting the description of in–scope merchandise, are within the class or kind of merchandise subject to the order on folding metal tables and chairs (''FMTCs'') from the PRC.

EFFECTIVE DATE: October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–0650.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2005, Meco requested that the Department of Commerce (''Department'') determine whether folding metal tables with cross–bars are circumventing the order. On June 1, 2006, the Department initiated a formal anti–circumvention inquiry relating to minor alterations with respect to folding metal tables and chairs. On November 6, 2006, the Department issued a questionnaire to all producers in the PRC on the scope service list. On December 21, 2006, Cosco Home and Office Products (''Cosco''), a U.S. importer of subject merchandise, and PRC producers Feili Group (Fujian) Co., Ltd. and Feili Furniture Development Limited Quanzhou City (collectively ''Feili''), New–Tec Integration (Xiamen) Co., Ltd. (''New–Tec''), Dongguan Shichang Metals Factory Co. Ltd. (''Shichang''), and Lifetime Products (Xiamen), Inc. (''Lifetime''), submitted responses to the Department's questionnaire. On January 12, 2007, Lifetime, Meco and Cosco submitted comments on the questionnaire responses.

On February 2, 2007, Meco submitted rebuttals to Cosco's comments on the questionnaire responses. On May 25, 2007 and June 1, 2007, the Department verified the information in Feili's and New–Tec's questionnaire responses, respectively. On August 13, 2007, the Department issued verification reports for Feili (''Feili Verification Report'') and New–Tec (''New–Tec Verification Report'').

Scope of the Order

The products covered by this order consist of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

- Lawn furniture;
- Trays commonly referred to as ''TV trays;''
- Side tables;
- Child–sized tables;
- Portable counter sets consisting of rectangular tables 36″ high and matching stools; and,
- Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28″ to 36″ wide by 48″ to 96″ long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross–braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross–braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

- Folding metal chairs with a wooden back or seat, or both;
- Lawn furniture;
- Stools;
- Chairs with arms; and
- Child–sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.015, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Based on a request by RPA International Pty., Ltd. and RPS, LLC (collectively, ''RPA''), the Department ruled on January 13, 2003, that RPA's poly–fold metal folding chairs are within the scope of the order because they are identical in all material respects to the merchandise described in the petition, the initial investigation, and the determinations of the Secretary.

On May 5, 2003, in response to a request by Staples, the Office Superstore Inc. (''Staples''), the Department issued a scope ruling that the chair component of Staples' ''Complete Office–To-Go,'' a folding chair with a tubular steel frame and a seat and back of plastic, with measurements of: height: 32.5 inches; width: 18.5 inches; and depth: 21.5 inches, is covered by the scope of the

order because it is identical in all material respects to the scope description in the order, but that the table component, with measurements of: width (table top): 43 inches; depth (table top): 27.375 inches; and height: 34.875 inches, has legs that fold as a unit and meets the requirements for an exemption from the scope of the order.

On September 7, 2004, the Department found that table styles 4600 and 4606 produced by Lifetime Plastic Products Ltd. are within the scope of the order because these products have all of the components that constitute a folding metal table as described in the scope.

On July 13, 2005, the Department issued a scope ruling determining that ''butterfly'' chairs are not within the scope of the antidumping duty order because they do not meet the physical description of merchandise covered by the scope of the order because they do not have cross braces affixed to the front and/or rear legs, and the seat and back is one piece of cloth that is not affixed to the frame with screws, rivets, welds, or any other type of fastener.

On July 13, 2005, the Department issued a scope ruling determining that folding metal chairs imported by Korhani of America Inc. are within the scope of the antidumping duty order because the imported chair has a wooden seat which is padded with foam and covered with fabric or polyvinyl chloride, attached to the tubular steel seat frame with screws, and has cross braces affixed to its legs.

On May 1, 2006, the Department issued a scope ruling determining that ''moon chairs'' are not included within the scope of the antidumping duty order because moon chairs have different physical characteristics, different uses, and are advertised differently that chairs covered by the scope of the order.

On October 4, 2007, the Department issued a scope ruling determining that International E–Z Up Inc.'s (''E–Z Up'') Instant Work Bench is not included within the scope of the antidumping duty order because its legs and weight do not match the description of the folding metal tables in the scope of the order.

On April 18, 2008, the Department issued a scope ruling determining that the VIKA Twofold 2–in–1 Workbench/Scaffold (''Twofold Workbench/Scaffold'') imported by Ignite USA, LLC from the PRC is not included within the scope of the antidumping duty order because its rotating leg mechanism differs from the folding metal tables subject to the order, and its weight is twice as much as the expected maximum weight for folding metal tables within the scope of the order.

Legal Framework

Section 781(c) of the Tariff Act of 1930 (''the Act''), dealing with minor alterations of merchandise, states that:

> (1) In general. The class or kind of merchandise subject to– (A) an investigation under this title, (B) an antidumping duty order issued under section 736, (C) a finding issued under the Antidumping Act, 1921, or (D) a countervailing duty order issued under section 706 or section 303, shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification. (2) Exception. Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

Section 351.225(i) of the Department's regulations states that under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

Criteria for Analysis

While the statute is silent regarding what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates that there are certain factors that should be considered before reaching an anti–circumvention determination. Previous anti–circumvention cases[1] have relied on the factors listed in the Senate Finance Committee report on the Omnibus Trade and Competitiveness Act of 1988 (which amended the Tariff Act of 1930 to include the anti–circumvention provisions contained in section 781), which states:

> [i]n applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products. Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess., at 100 (1987).

In the case of an allegation of a ''minor alteration'' claim under section 781(c) of the Act, it is the Department's practice to look at the five factors listed in the Senate Finance Committee report to determine if circumvention exists in a particular case.[2] Each anti–circumvention review is highly dependent on the facts on the record, and must be analyzed in light of those specific facts. Thus, in anti–circumvention cases we have historically analyzed several additional criteria to determine if circumvention of the order is taking place.[3]

Analysis

We organized the evidence and argument we received in the questionnaire responses, in the comments on those questionnaire responses, and at the verifications into the following categories:

A. Whether Tables with Cross–Bars Were Expressly Excluded from the Scope;
B. Senate Report Criteria; and
C. Other Case–Specific Criteria.

Based on our review of the record evidence and our analysis of the comments received, the Department determines that imports from the PRC of folding metal tables with legs connected by cross–bars, so that the legs fold in sets, and otherwise meet the description of in–scope merchandise, are within the class or kind of merchandise subject to the order on FMTCs from the PRC. For a complete discussion of the Department's analysis, see the Preliminary Analysis Memorandum for the Minor Alterations Anti–Circumvention Inquiry of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China (''Preliminary Analysis Memorandum''), dated concurrently with this notice.

As explained in the Preliminary Analysis Memorandum, we preliminarily determine that the folding metal tables with cross–bars at issue in this case are not expressly excluded

[1] *See, e.g., Preliminary Determination of Circumvention of Antidumping Order; Cut-to-Length Carbon Steel Plate from Canada*, 65 FR 64926, 64929 (October 31, 2000) (unchanged in final results, 66 FR 7617, 7618 (January 24, 2001)) (''*Canadian Plate*''); *see also Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan*, 68 FR 33676, 33679 (June 5, 2003).

[2] *See, e.g., Canadian Plate*, 65 FR at 64929.

[3] *See id*, 65 FR at 64930-31.

from the order. Also, regarding the Senate Report criteria, we preliminarily find that folding metal tables with legs connected by cross–bars have the same physical characteristics as the folding metal tables in the scope of the FMTCs order and the *ITC Final Report* except for the presence of cross–bars located near the table top. There are no significant differences in the expectations of the ultimate users, uses of the merchandise, and channels of marketing between folding metal tables with and without cross–bars. Furthermore, respondents conceded that the cost of adding cross–bars to tables in the course of production is negligible.

With respect to other case–specific criteria, we preliminarily find that since the original investigation, respondents have shifted the majority of their production for U.S. customers away from folding metal tables without cross–bars to folding metal tables with cross–bars. The timing of this shift further indicates circumvention of the order by making a minor alteration.

Although parties claim that the cross–bar increases the table's strength, there is no documentation supporting that claim. The fact that the bars are positioned near the top of the table, minimizing any potential benefit from their addition, weighs against finding that the cross–bars were added simply to strengthen the table. Moreover, these tables are not advertised as having cross–bars, nor are any claims made in the marketing materials that they are stronger or that they have no pinch points. Taken as a whole, this evidence leads to our determination that folding metal tables with legs with cross–bars are being produced and imported in circumvention of the antidumping duty order.

As a result of our inquiry, we preliminarily determine that imports from the PRC of folding metal tables with legs connected by cross–bars, so that the legs fold in sets, and otherwise meeting the description of in–scope merchandise, are within the class or kind of merchandise subject to the order on FMTCs from the PRC. *See* Section 781(c) of the Act.

Suspension of Liquidation

In accordance with section 351.225(l)(2) of the Department's regulations, for folding metal tables meeting the description of the folding metal tables described in the scope of the FMTCs order except that they have cross–bars connecting the legs, so that the legs fold in sets, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 2006, the date of the initiation of this inquiry. We will also instruct CBP to require a cash deposit of estimated duties at the applicable rates for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after June 1, 2006, the date of initiation of this inquiry, in accordance with section 351.225(l)(2).

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 20 days of the publication of this notice. See 19 CFR 351.225(f)(1)(iii). Interested parties may file rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, no later than 10 days after the date on which the case briefs are due. See 19 CFR 351.225(f)(1)(iii). Interested parties may request a hearing within 20 days of the publication of this notice. Interested parties will be notified by the Department of the location and time of any hearing, if one is requested.

This preliminary determination of circumvention is in accordance with section 781(c) of the Act and 19 CFR 351.225.

Dated: October 20, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

{FR Doc. E8–25558 Filed 10–24–08; 8:45 am}

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–201–836

Initiation of Antidumping Duty Changed Circumstances Review: Light–Walled Rectangular Pipe and Tube from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Ternium México, S.A. de C.V. (''Ternium Mexico''), and pursuant to section 751(b) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.216 and 351.221(c)(3), the Department is initiating a changed circumstances review of the antidumping duty order on light–walled rectangular pipe and tube (''LWRPT'') from Mexico. This review will determine whether Ternium Mexico is the successor–in-interest to Hylsa, S.A. de C.V. (''Hylsa'').

EFFECTIVE DATE: October 27, 2008.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

Background

The Department published the antidumping duty order on LWRPT from Mexico on August 5, 2008. *See Light–Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light–Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403 (August 5, 2008).

On September 3, 2008, Ternium Mexico filed a request for a changed circumstances review of the antidumping duty order on LWRPT from Mexico, claiming that Hylsa, a Mexican producer of LWRPT, has changed its name to Ternium Mexico. Ternium Mexico requested that the Department determine whether it is the successor–in-interest to Hylsa, in accordance with section 751(b) of the Act, and 19 CFR 351.216. In addition, Ternium Mexico submitted documentation in support of its claim. In response to Ternium Mexico's request, the Department is initiating a changed circumstances review of this order.

Scope of the Order

The merchandise that is covered by this order are certain welded carbon quality light walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium.

The description of carbon quality is intended to identify carbon quality products within the scope. The welded carbon quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. On September 3, 2008, Ternium Mexico submitted its request for a changed circumstances review. With this request, Ternium Mexico submitted certain information related to its claim that Hylsa changed its name to Ternium Mexico, including information describing the acquisition of Hylsa by Ternium Luxembourg and the changes in Hylsa's operating and corporate structure immediately following that acquisition. Based on the information Ternium Mexico submitted regarding a name change, the Department has determined that changed circumstances sufficient to warrant a review exist. *See* 19 CFR 351.216(d). In antidumping duty changed circumstances reviews involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip From Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) and *Certain Cut–to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 22847 (May 3, 2005) (''*Plate from Romania*''). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Plate from Romania*, 70 FR 22847. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999). Although Ternium Mexico submitted documentation related to its name change and some limited information regarding the four factors that the Department considers in its successor–in-interest analysis, it failed to provide complete supporting documentation for the four elements listed above that is sufficient for making the successor–in-interest determination without requesting additional information. Accordingly, the Department has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). Therefore, the Department is not issuing the preliminary results of its antidumping duty changed circumstances review at this time.

The Department will issue questionnaires requesting additional information for the review, and will publish in the **Federal Register** a notice of the preliminary results of the antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(2) and (4), and 19 CFR 351.221(c)(3)(i). The notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

During the course of this antidumping duty changed circumstances review, the cash deposit requirements for the subject merchandise exported and manufactured by Ternium Mexico will continue to be the rate established in the amended final results of the investigation for all other manufacturers and exporters not previously reviewed. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Light–Walled Rectangular Pipe and Tube From Mexico*, 73 FR 45400 (August 5, 2008). The cash deposit will be altered, if warranted, pursuant only to the final results of this review.

This notice of initiation is in accordance with section 751(b)(1) of the Act, 19 CFR 351.216(b) and (d), and 19 CFR 351.221(b)(1).

Dated: October 20, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–25554 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–046]

Polychloroprene Rubber From Japan: Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Antidumping Duty Finding, in Part

Correction

In notice document E8–22458 beginning on page 56548 in the issue of Monday, September 29, 2008, make the following corrections:

1. On page 56548, in the third column, under the heading **Background**, in the second paragraph, in the third line, ''Polychloroprene Rubber from Japan: Final Changed Circumstances Review and Determination to Revoke Finding in Part'' should read ''*See Polychloroprene Rubber from Japan: Final Changed Circumstances Review and Determination to Revoke Finding in Part*''.

2. On page 56549, in the first column, in the first full paragraph, in the 10th line, ''and does include aqueous dispersions of'' should read ''and does *not* include aqueous dispersions of''.

3. On the same page, in the same column, in the same paragraph, in the 20th line, ''dispersions of these polymers and does'' should read ''dispersions of these polymers and does *not*''.

4. On the same page, in the same column, in the same paragraph, in the 30th line ''in solid form and does include aqueous'' should read ''in solid form and does *not* include aqueous''.

5. On the same page, in the same column, under the heading **Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Antidumping Finding, in Part**, in the first paragraph, in the fifth line, ''i.e.; a'' should read ''*i.e*, a''.

6. On the same page, in the second column, in the first paragraph, in the fifth line, ''19 CFR 351.216(d)'' should read ''*See* 19 CFR 351.216(d)''.

7. On the same page, in the third column, in the first paragraph, in the seventh line, ''pH of S'' should read ''pH of 8''.

8. On the same page, in the same column, in the same paragraph, in the 10th line, ''and does pp include aqueous'' should read ''and does *not* include aqueous''.

9. On the same page, in the same column, in the same paragraph, in the 21st line, ''and does include aqueous'' should read ''and does *not* include aqueous''.

10. On the same page, in the same column, under the heading **Public Comment**, in the first paragraph, in the ninth and 10th lines, ''19 CFR 351.309(d)'' should read ''*See* 19 CFR 351.309(d)''.

11. On page 56550, in the first column, in the first full paragraph, in the first line, ''Consistent with 19 CFR 35l.216(e)'' should read ''Consistent with 19 CFR 351.216(e)''.

12. On the same page, in the same column, in same paragraph, in the 16th and 17th lines, ''See 19 CFR 35l.222(g)(4)'' should read ''*See* 19 CFR 351.222(g)(4)''.

[FR Doc. Z8–22458 Filed 10–24–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper Products From the People's Republic of China: Notice of Initiation of Anti-circumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Seaman Paper Company of Massachusetts, Inc. (the petitioner), the Department of Commerce (the Department) is initiating an anti-circumvention inquiry to determine whether certain imports of tissue paper from Thailand are circumventing the antidumping duty order on certain tissue paper products (tissue paper) from the People's Republic of China (PRC). *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China,* 70 FR 16223 (March 30, 2005) (*Tissue Paper Order*).

DATES: *Effective Date:* October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2008, the petitioner submitted a letter requesting that the Department initiate and conduct an anti-circumvention inquiry, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h), to determine whether imports of tissue paper from Thailand which Sunlake Décor Co., Ltd. (Sunlake) [1] made from jumbo rolls and cut sheets of tissue paper produced in the PRC are circumventing the antidumping duty order on tissue paper from the PRC. Specifically, the petitioner alleges that PRC-produced jumbo rolls and cut sheets of tissue paper sent to Thailand for completion or assembly into merchandise of the same class or kind as that covered by the antidumping duty order on tissue paper from the PRC are circumventing that order.

On September 19, 2008, Department officials met with the petitioner's counsel to discuss the petitioner's September 10, 2008, anti-circumvention inquiry request. *See* memorandum to the file entitled, ''Meeting with Counsel for the Petitioner,'' dated September 24, 2008.

On September 25, 2008, Department officials spoke with the foreign market researcher who provided certain information contained in the anti-circumvention inquiry request. *See* memorandum to the file entitled, ''Telephone Conversation with Foreign Market Researcher,'' dated September 29, 2008.

To date, we have received no comments from Sunlake on this matter.

Scope of the Order

The tissue paper products subject to order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

Tissue paper products subject to this order do not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS) and appear to be imported under one or more of the several different ''basket'' categories, including but not necessarily limited to the following subheadings: HTSUS 4802.30, HTSUS 4802.54, HTSUS 4802.61, HTSUS 4802.62, HTSUS 4802.69, HTSUS 4804.39, HTSUS 4806.40, HTSUS 4808.30, HTSUS 4808.90, HTSUS 4811.90, HTSUS 4823.90, HTSUS 9505.90.40.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Excluded from the scope of the order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, i.e., disposable sanitary covers for toilet seats; and (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Initiation of Anti-Circumvention Proceeding

Applicable Statute

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting anti-circumvention inquiries under section 781(b) of the Act, the Department relies upon the following criteria: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or

[1] Sunlake is a company located in Thailand.

assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding. As discussed below, the petitioner presented evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

The petitioner argues that the tissue paper from Thailand, which it alleges Sunlake Décor Co., Ltd. (Sunlake) completes or assembles (*e.g.*, such as cutting to length, possibly folding, and packaging) in Thailand before exporting it to the United States, is produced from jumbo rolls and sheets of PRC-origin tissue paper obtained from its affiliate, Zhangzhou MagicPro G.M. Arts and Crafts Co., Ltd. (ZMGM), and is physically identical to the subject merchandise cut-to-length tissue paper from the PRC. Accordingly, pursuant to section 781(b)(1)(A)(i) of the Act, the petitioner claims this tissue paper is of the same class or kind as the tissue paper produced in the PRC, which is subject to the antidumping duty order.

B. Completion of Merchandise in a Foreign Country

The petitioner states that the tissue paper that is the subject of the anti-circumvention inquiry request is made from jumbo rolls and sheets of tissue paper produced in the PRC and converted (*i.e.*, cut-to-length, possibly folded, and packaged) into cut-to-length sheets of tissue paper in Thailand for export to the United States. The petitioner argues that unlike Sunlake's PRC affiliate (*i.e.*, ZMGM), which has a production facility capable of producing tissue paper, Sunlake's facility in Thailand only has the ability to convert jumbo rolls and/or sheets of tissue paper into cut-to-length tissue paper and package it for exportation. The petitioner therefore concludes that, pursuant to section 781(b)(1)(B)(ii) of the Act, Sunlake's cut-to-length tissue paper is merchandise completed in another foreign country (Thailand) from merchandise that is produced in a country (the PRC) subject to an antidumping order which includes cut-to-length tissue paper in its scope.

C. Minor or Insignificant Process

The petitioner argues that for the purpose of section 781(b)(1)(C) of the Act, conversion of jumbo rolls and/or sheets of tissue paper produced in the PRC into cut-to-length tissue paper in Thailand is a ''minor or insignificant process'' as defined by the Act. According to the petitioner, the record of this proceeding contains substantial and detailed evidence demonstrating that converting jumbo rolls and sheets of tissue paper is a minor or insignificant process. The petitioner states that cutting and packaging tissue paper are operations that merely impart the final sheet size and form in which the product is delivered to the ultimate customer. The petitioner also states that the most fundamental aspects of the merchandise, such as the basis weight, texture, quality, and other special characteristics that may be required if the paper is intended for printing, are irrevocably established when the paper is produced. Furthermore, the petitioner claims that the types of minor assembly operations described above with respect to converting jumbo rolls and sheets of tissue paper are consistent with the information its market researcher obtained from Sunlake's facility in Thailand. *See* September 10, 2008, anti-circumvention inquiry request at Exhibit 6.

The petitioner states that converting the tissue involves two to three minor processes typically performed by hand in Thailand: cutting the tissue to a specific size, folding it (by hand) and packaging it for export (by hand). The petitioner contends that, based on the information obtained from its market researcher, Sunlake only has converting operations in Thailand. The petitioner cites to an affidavit in its anti-circumvention inquiry request (at Exhibit 6), wherein its market researcher reported first-hand knowledge of the operations at the Sunlake facility based on a site visit during which the market researcher observed only converting operations. Therefore, the petitioner argues, the statements made by the market researcher in its affidavit confirm that Sunlake's converting operations involve cutting, hand-folding and hand-packaging, rather than highly capital-intensive and automated activities relevant to tissue paper production, and are therefore ''minor or insignificant'' processes.

The petitioner argues that an analysis of the relevant statutory factors of section 781(b)(2) of the Act further supports its conclusion that the processing in Thailand is ''minor or insignificant.'' These factors include: (1) Level of investment in the foreign country; (2) level of research and development in the foreign country; (3) nature of the production process in the foreign country; (4) extent of production facilities in the foreign country; and (5) whether the value of the processing in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

The petitioner argues that the processing in Thailand is ''minor and insignificant'' as the term is defined in section 781(b)(2) of the Act when compared to the complex, highly capital-intensive, skilled operations required to produce lightweight tissue paper from pulp, chemicals, and dyes. The petitioner's analysis of the statutory factors follows below.

(1) Level of Investment

The petitioner claims that available information concerning Sunlake's operations indicates that little investment has been or is being made in Thailand. The petitioner argues that Sunlake's business model indicates that Sunlake only serves as a converting operation and an export platform for Magicpro companies to the PRC (including ZMGM) and is not an integrated production operation (*see* page 41 of the anti-circumvention inquiry request). This assessment is consistent with the fact that Sunlake rents but does not own its own facilities, and that its converting operations are much less capital-intensive and more susceptible to relocation than papermaking operations. The petitioner further argues that ZMGM would have no desire to set up an operation in Thailand that would compete with its own production operations. The petitioner concludes that the level of investment in the Thailand processing facility is low.

(2) Level of Research and Development

The petitioner maintains that the evidence reasonably available indicates that no research and development (R&D) is taking place in Thailand. The petitioner states that because Sunlake is affiliated with ZMGM, it is reasonable to presume that any R&D efforts would originate at ZMGM in the PRC. Furthermore, the petitioner states that tissue paper production is a mature industry and any technical developments are refinements rather than new technologies. Converting operations also reflect mature technologies, according to the petitioner, and the Thai converting operations involve hand-folding and packaging, which are less automated

and less R&D-intensive activities than those found in the United States. *See* September 10, 2008, anti-circumvention inquiry request at page 43.

(3) Nature of the Production Process in Thailand

The petitioner argues that the data obtained from its market researcher indicate that Sunlake's operations in Thailand are limited to PRC-origin jumbo rolls and sheets being cut to size (if necessary) and packed by hand prior to export. They involve unskilled manual labor in contrast to skilled labor required for papermaking. Therefore, the petitioner contends that Sunlake's ''production process'' reflects operations that are designed to assemble or complete the merchandise in a minor or insignificant fashion. *See* September 10, 2008, anti-circumvention inquiry request at page 44. The petitioner notes that all of the operations observed and documented by its market researcher are designed and intended to convert (cut and/or package) the tissue paper imported into Thailand without altering its fundamental and critical characteristics of basis weight, quality, and texture that are established during the papermaking stage of production.

(4) Extent of Production in Thailand

The petitioner states that Sunlake's operations are housed in rented facilities, a fact which suggests a lower level of investment than that which would be required by the capital-intensive nature of papermaking operations. The petitioner also states that Sunlake does not have papermaking operations. According to the petitioner, the capital-intensive nature of papermaking operations requires that the necessary machinery be permanently placed and operated, while converting and packaging operations can be temporarily housed and are easily movable. The petitioner claims that this information supports a determination that Sunlake was established as a means for the Magicpro companies in the PRC (including ZMGM) to continue using their tissue paper production capacity and doing business in the U.S. market without paying duties.

(5) Value of Thailand Processing Compared to Tissue Paper Imported Into the United States

The petitioner states that it does not have access to information concerning the cost of the jumbo rolls and sheets of tissue paper exported from the PRC to Sunlake, or the costs associated with the converting operations performed in Thailand; however, it contends that data from the record of the anti-circumvention inquiry regarding tissue paper exports from Vietnam support a determination that the value of processing performed in Thailand represents a small portion of the value of the merchandise imported into the United States. Specifically, in the Vietnam anti-circumvention inquiry, the Department determined that the same type of conversion processes were minor or insignificant for purposes of the statute, and that inclusion of the resulting tissue paper in the order was appropriate to avoid circumvention of the order. *See Certain Tissue Paper Products From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination,* 73 FR 21580 (April 22, 2008) (which was upheld in *Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 73 FR 57591 (October 3, 2008)). In fact, the petitioner notes that in the anti-circumvention inquiry involving Vietnam, the activities performed by the Vietnamese entity at issue included more involved forms of processing (*e.g.*, dip-dying) which would add greater amounts of value than merely converting jumbo rolls and, particularly, sheets. In contrast, the petitioner contends that Sunlake is importing the jumbo rolls and sheets and is only converting them without additional processing (such as dip-dying).

D. Value of Merchandise Produced in PRC

The petitioner argues that the evidence as noted in its anti-circumvention inquiry request clearly supports its position that the value of the tissue paper jumbo rolls and sheets produced in the PRC and sent to Sunlake represents a significant portion of the total value of the merchandise exported to the United States, as measured by the prices at which jumbo rolls and cut tissue paper sheets are produced and/or sold at market value. The petitioner notes that this conclusion is particularly supported by the fact that Sunlake's activities are limited to cutting and folding (if necessary), packing, and shipping the finished tissue paper product.

E. Factors To Consider in Determining Whether Action Is Necessary

The petitioner argues that additional factors must be considered in the Department's decision whether to issue a finding of circumvention regarding importation of Thai tissue paper. These factors are discussed below.

Pattern of Trade

The petitioner states that section 781(b)(3) of the Act directs the Department to take into account patterns of trade when making a decision in an anti-circumvention case. The petitioner argues that two months after the antidumping duty order was issued, substantial volumes of certain tissue paper products began appearing as U.S. imports from Thailand through Sunlake, and have continued since then. The petitioner bases this claim on an analysis of publicly available U.S. import statistics and company-specific information from the Port Import Export Reporting Service (PIERS). *See* September 10, 2008, anti-circumvention inquiry request at Exhibits 1 and 2.

Affiliation

The petitioner states that section 781(b)(3) of the Act directs the Department to take into account whether the manufacturer or exporter of the merchandise is affiliated with the person who uses the merchandise to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States when making a decision in an anti-circumvention case. The petitioner contends that Sunlake is affiliated with multiple Magicpro companies worldwide, including ZMGM, which is known to be a tissue paper producer in the PRC. See September 10, 2008, anti-circumvention inquiry request at pages 51–52 and Exhibit 6. The petitioner argues that the affiliation, the timing of Sunlake's establishment and the nature of the company's operation (*i.e.*, importing rolls and/or sheets to be converted and then exporting them) suggest a clear intention to shift completion of merchandise under order from the PRC to Thailand. *See* September 10, 2008, anti-circumvention request at page 52.

Subsequent Import Volume

The petitioner states that section 781(b)(3) of the Act directs the Department to take into account whether imports into the foreign country of the merchandise have increased after the initiation of the investigation which resulted in the issuance of an order when making a decision in an anti-circumvention case. The petitioner claims it does not have access to precise data concerning trade flows of jumbo rolls and sheets of tissue paper between Magicpro companies in the PRC and Sunlake in Thailand; however, it maintains that import data

from World Trade Atlas show that the volume of tissue paper shipments from the PRC to Thailand increased significantly after the original investigation was initiated and the antidumping duty order was issued in this proceeding. In addition, the petitioner notes that it is impossible that Sunlake would have received jumbo rolls before May 17, 2005, because the company did not exist before then. *See* September 10, 2008, anti-circumvention inquiry request at pages 6 and 53.

The petitioner also points out that the evidence concerning Thailand's prior lack of exports of tissue paper to the United States, coupled with the emergence of large export volumes of tissue paper from Thailand starting four months after the petition was filed, provides a reasonable basis for inferring that jumbo roll and large tissue sheet imports into Thailand from the PRC increased after the initiation of the original investigation in this proceeding. *See* September 10, 2008, anti-circumvention inquiry request at page 53.

Analysis

Based on our analysis of the petitioner's September 10, 2008, anti-circumvention inquiry request, the Department determines that a formal anti-circumvention inquiry is warranted. In accordance with 19 CFR 351.225(e), if the Department finds that the issue of whether a product is included within the scope of an order cannot be determined based solely upon the request and the descriptions of the merchandise, the Department will notify by mail all parties on the Department's scope service list of the initiation of a scope inquiry, including an anti-circumvention inquiry. In addition, in accordance with 19 CFR 351.225(f)(1), a notice of the initiation of an anti-circumvention inquiry issued under 19 CFR 351.225(e) will include a description of the product that is the subject of the anti-circumvention inquiry—in this case, cut-to-length tissue paper that contains the characteristics as provided in the scope of the order—and an explanation of the reasons for the Department's decision to initiate an anti-circumvention inquiry, as provided below.

With regard to whether the merchandise from Thailand is of the same class or kind as the merchandise produced in the PRC, the petitioner has presented information indicating that the merchandise being imported from Thailand is of the same class or kind as the tissue paper produced in the PRC, which is subject to the antidumping duty order. The merchandise from Thailand shares physical characteristics with the merchandise covered by the antidumping duty order.

With regard to completion of merchandise in a foreign country, the petitioner has also presented information that the tissue paper from Thailand is being processed in Thailand using PRC jumbo rolls and/or sheets of tissue paper as the input.

With regard to whether the conversion of PRC jumbo rolls and/or sheets of tissue paper into cut-to-length tissue paper from Thailand is a ''minor or insignificant process,'' the petitioner addressed the relevant statutory factors used to determine whether the processing of jumbo rolls and sheets of tissue paper is minor or insignificant with the best information available to the petitioner at the time of the request. The petitioner relied on information obtained from its market researcher for this purpose. *See* September 10, 2008, anti-circumvention inquiry request at Exhibit 6.

Having established through direct contact the reliability of the data presented by the market researcher in Exhibit 6, we find that the information presented by the petitioner supports its request to initiate an anti-circumvention inquiry. In particular, the petitioner provides evidence for each of the criteria provided in the statute, including the following: (1) Sunlake's corporate and financial profile suggests little investment has been made in Sunlake; (2) because ZMGM has a fully integrated production facility and is affiliated with Sunlake, it is reasonable to infer that R&D takes place in the PRC; (3) cutting, folding and packaging (*i.e.*, the converting process) do not alter the fundamental characteristics of the tissue paper; (4) Sunlake's rented facilities suggest a lower investment level than that required by the capital-intensive nature of the papermaking process; and (5) Sunlake's limited operations suggest that converting tissue paper adds little value to the merchandise imported into the United States.

With respect to the value of the merchandise produced in the PRC, the petitioner relied on the information and arguments in the ''minor or insignificant process'' portion of its anti-circumvention request to indicate that the value of jumbo rolls and sheets of tissue paper is significant relative to the total value of finished merchandise exported to the United States. We find that the information adequately meets the requirements of this factor, as discussed above.

Finally, the petitioner argued that the Department should also consider the pattern of trade, affiliation, and subsequent import volume as factors in determining whether to initiate the anti-circumvention inquiry. The import information submitted by the petitioner indicates that U.S. imports of tissue paper from Thailand are rising significantly, and that the volume of tissue paper shipments from the PRC to Thailand has increased significantly. In addition, the petitioner provides information suggesting that Sunlake's affiliation with a known producer of the subject merchandise in the PRC, the timing of Sunlake's establishment, and the nature of Sunlake's operations reflect an intention to shift completion of merchandise subject to the order from the PRC to Thailand.

Accordingly, we are initiating a formal anti-circumvention inquiry concerning the antidumping duty order on certain tissue paper products from the PRC, pursuant to section 781(b) of the Act. In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

The Department is focusing its analysis of the significance of the production process in Thailand on the single processor identified by the petitioner, namely Sunlake, in its September 10, 2008, anti-circumvention inquiry request and about which sufficient information to initiate an anti-circumvention inquiry has been provided. If the Department receives a formal request from an interested party regarding potential circumvention by other Thai companies involved in processing PRC jumbo rolls and/or sheets for export to the United States within sufficient time, we will consider conducting the inquiries concurrently.

The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation consistent with the language of section 781(f) of the Act.

This notice is published in accordance with 19 CFR 351.225(f).

Dated: October 21, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8–25584 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–809

Certain Forged Stainless Steel Flanges from India; Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2008, the Department of Commerce (the Department) published the preliminary intent to rescind and rescission in part for the administrative review of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India manufactured by Pradeep Metals Limited (Pradeep) and covering the period February 1, 2007, through January 31, 2008. *See Certain Forged Stainless Steel Flanges from India; Preliminary Intent to Rescind Administrative Review and Rescission in Part*, 73 FR 44969 (August 1, 2008) (*Preliminary Intent*). We are rescinding the review for Pradeep because we have determined that it had no *bona fide* U.S. sales during the period of review.

EFFECTIVE DATE: October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2008, the Department published the *Preliminary Intent*. In response to the Department's invitation to comment on the Preliminary Intent, Pradeep submitted comments on August 27, 2008. However, these comments included new, unsolicited information after the regulatory deadline for such information. Therefore, we returned the submission to Pradeep, and requested that it remove the new information. *See* the Department's letter to Pradeep dated September 8, 2008. Pradeep resubmitted its comments on September 17, 2008. However, Pradeep had not removed the new, unsolicited information. Therefore, we returned Pradeep's comments, and have not considered them in these final results of review. *See* the Department's letter to Pradeep dated September 23, 2008.

We also received comments from Rosemount, Inc. (Rosemount), the customer for Pradeep's U.S. sale, on September 2, 2008. However, this submission likewise contained new, unsolicited information after the deadline for such information. Therefore, we returned the submission to Rosemount with instructions to remove the new information. *See* the Department's letter to Rosemount dated September 8, 2008. We received Rosemount's revised comments on September 15, 2008. However, this version had filing deficiencies for which we returned the submission to Rosemount. *See* the Department's letter to Rosemount dated September 23, 2008. Rosemount submitted a revised version on September 26, 2008.

Period of Review

The period of review is February 1, 2007, to January 31, 2008.

Scope of the Order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weldneck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

Final Rescission of Review

In the *Preliminary Intent*, we stated that we intended to rescind the review with respect to Pradeep because we had determined, based on the totality of the circumstances, that Pradeep's U.S. sale was not *bona fide*. *See Preliminary Intent* at 44970. We received comments from Rosemount which, as explained below, we have addressed in the issues and decision memorandum accompanying this notice. Rosemount's comments did not change our preliminary ruling announced in the *Preliminary Intent*. Therefore, we are rescinding this review with respect to Pradeep.

Analysis of Comments Received

All issues raised in our *Preliminary Intent* are addressed in the ''Issues and Decision Memorandum'' from Richard Weible, Director, Office 7, Import Administration, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated concurrently with this notice (Decision Memorandum), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Department of Commerce building. In addition, a complete version of the decision memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/release/release.html*. The paper copy and electronic version of the decision memorandum are identical in content.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For Pradeep, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with

this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred, and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 20, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

Appendix - Issues Raised in Decision Memorandum

Comment: *Bona Fide* Sale

[FR Doc. E8–25548 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–932)

Certain Steel Threaded Rod from the People's Republic of China: Amended 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: October 27, 2008.

SUMMARY: On October 8, 2008, the Department of Commerce (''Department'') published the preliminary determination of sales at less than fair value (''LTFV'') in the antidumping investigation of certain steel threaded rod from the People's Republic of China (''PRC''). *See Certain Steel Threaded Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 58931 (October 8, 2008) (''*Preliminary Determination*''). We are amending our *Preliminary Determination* to correct certain ministerial errors with respect to the antidumping duty margin calculation for RMB Fasteners Ltd. and IFI and Morgan Ltd. (collectively, ''RMB & IFI Group''). The corrections to the RMB & IFI Group margin also affect the margin assigned to the companies receiving a separate rate.

FOR FURTHER INFORMATION CONTACT: Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC, 20230; telephone: (202) 482–0409.

SUPPLEMENTARY INFORMATION: On October 8, 2008, the Department published in the **Federal Register** the preliminary determination that certain steel threaded rod from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in section 733 of the Tariff Act of 1930, as amended (''Act''). See *Preliminary Determination*.

On October 8, 2008, the RMB & IFI Group filed timely allegations of ministerial errors contained in the Department's *Preliminary Determination*. After reviewing the allegations, we have determined that the *Preliminary Determination* included significant ministerial errors. Therefore, in accordance with section 351.224(e) of the Department's regulations, we have made changes, as described below, to the *Preliminary Determination*.

Period of Investigation

The period of investigation is July 1, 2007, through December 31, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, March 5, 2008. *See* section 351.204(b)(1) of the Department's regulations.

Scope of Investigation

The merchandise covered by this investigation is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold–drawn, cold–rolled, machine straightened, or otherwise cold–finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to this investigation are non–headed and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.*, galvanized, whether by electroplating or hot–dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of this investigation are steel threaded rod, bar, or studs, in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheading 7318.15.5060 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of the investigation are: (a) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (''ASTM'') A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, or ASTM A320 Grade L7.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Significant Ministerial Error

Ministerial errors are defined in section 735(e) of the Act as ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' Section 351.224(e) of the Department's regulations provides that the Department ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination.'' A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted–average dumping margin calculated in the original (erroneous) preliminary determination, or (2) a difference between a weighted–average dumping margin of zero or *de minimis* and a weighted–average dumping margin of greater than *de minimis* or vice versa. *See* section 351.224(g) of the Department's regulations.

Ministerial Error Allegations

Domestic & International Movement Expenses

The RMB & IFI Group argues that the Department incorrectly calculated the domestic movement and international movement expenses in the Department's calculation of U.S. price, by applying the incorrect units of measure. The RMB & IFI Group contends that the resulting weighted–average dumping margin was significantly inflated. *See* Memorandum to the File from Bobby Wong, Senior International Trade Analyst, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9: Antidumping Duty Investigation of Certain Steel Threaded Rod from the People's Republic of China: RMB & IFI Program Analysis for the Preliminary Determination, dated October 8, 2008. The RMB & IFI Group stated that a correction to the units of measure corresponding to domestic and international movement expenses would significantly reduce the calculated dumping margin, and would constitute a significant error as set forth in the statute. Therefore, the RMB & IFI Group urges that the Department correct the unit of measure used in the calculation of domestic and international movement expenses in the margin calculation program and in the company analysis memorandum.

With respect to domestic movement expenses, the Department finds that it overlooked the fact that the RMB & IFI Group reported the net–weight on an inconsistent unit of measure from the other data reported in U.S. sales database and, thus, the Department did not correct for the inconsistency.

Furthermore, with respect to international movement expenses, the Department agrees that the surrogate marine insurance expense should also be assessed using respondent's reported unit of measure rather than the total value of the shipment.

Therefore, we agree that the Department did not correctly calculate domestic and international movement expenses using a consistent unit of measure. This error qualifies as a ministerial error in accordance with section 735(e) of the Act. For detailed discussion, *see* Memorandum to File from Bobby Wong, Case Analyst; Investigation of Certain Steel Threaded Rod from the People's Republic of China: RMB & IFI Group Amended Preliminary Analysis Memorandum, dated concurrent with this **Federal Register** notice (''RMB & IFI Group Amended Prelim Analysis Memorandum'').

Amended Preliminary Determination

We determine that these allegations qualify as ministerial errors as defined in section 351.224(g) of the Department's regulations because they result in a change of more than five absolute percentage points to the RMB & IFI Group's dumping margin. Accordingly, we have corrected the errors alleged by the RMB & IFI Group. *See* RMB & IFI Group Amended Prelim Analysis Memorandum.

As a result of correcting the above errors in the RMB & IFI Group calculations, the margin for the companies granted separate–rate status must also be revised because the margin for those companies was partially derived from the RMB & IFI Group margin. *See* Memorandum to the File from Bobby Wong, Senior Analyst; Investigation of Certain Steel Threaded Rod from the People's Republic of China: Amended Preliminary Weight–Averaged Margin for Separate Rate Companies, dated concurrent with this **Federal Register** notice.

As a result of the corrected ministerial errors, the weighted–average dumping margins are:

CERTAIN STEEL THREADED ROD FROM THE PRC

Exporter	Producer	Weighted–Average Margin
RMB Fasteners Ltd., and IFI & Morgan Ltd. (''RMB and IFI Group'').	Jiaxing Brother Fastener Co., Ltd. (aka Jiaxing Brother Standard Parts Co., Ltd.)	40.49%
Ningbo Yinzhou Foreign Trade Co. Ltd.	Zhejiang Guorui Industry Co., Ltd.; or Ningbo Daxie Chuofeng Industrial Development Co. Ltd..	176.57%

Separate Rates Entities	Producer	Margin
Shanghai Recky International Trading Co., Ltd..	Shanghai Xiangrong International Trading Co., Ltd.; Shanghai Xianglong International Trading Co., Ltd.; Pighu City Zhapu Screw Cap Factory; or Jiaxing Xinyue Standard Part Co., Ltd..	55.48%
Suntec Industries Co., Ltd.	Jiaxing Xinyue Standard Part Co., Ltd.; or Haiyan County No. 1 Fasteners Factory.	55.48%
Hangzhou Grand Imp. & Exp. Co., Ltd.	Zhapu Creative Standard Parts Material Co., Ltd.	55.48%
Shanghai Prime Machinery Co. Ltd.	Haiyan Yida Fasteners Co., Ltd.; or Jiaxing Xinyue Standard Part Co., Ltd.	55.48%
Jiaxing Xinyue Standard Part Co., Ltd.	Jiaxing Xinyue Standard Part Co., Ltd.	55.48%
Certified Products International Inc.	Jiashan Zhongsheng Metal Products Co., Ltd.; or Jiaxing Xinyue Standard Part Co., Ltd..	55.48%
Zhejiang New Oriental Fastener Co., Ltd..	Zhejiang New Oriental Fastener Co., Ltd.	55.48%
Jiashan Zhongsheng Metal Products Co., Ltd..	Jiashan Zhongsheng Metal Products Co., Ltd.	55.48%
Haiyan Dayu Fasteners Co., Ltd.	Haiyan Dayu Fasteners Co., Ltd.	55.48%
PRC–wide Entity		**206.00%**

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination, in accordance with section 733(d) and (f) of the Act.

Postponement of the Final Determination

In the *Preliminary Determination*, the Department stated that it would make its final determination for this antidumping duty investigation no later than 75 days after the preliminary determination.

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days

after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. In addition, section 351.210(e)(2) of the Department's regulations require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four month period to not more than six months.

On October 8, 2008, Ningbo Yinzhou Foreign Trade Co., Ltd., one of the two mandatory respondents, requested a 60–day extension of the final determination and extension of the provisional measures. Thus, because our amended preliminary determination is affirmative, and the respondent requesting a postponement of the final determination and an extension of the provisional measures, accounts for a significant proportion of exports of steel threaded rod, and no compelling reasons for denial exist, we are postponing the deadline for the final determination by 60 days until February 20, 2009, based on the publication date of the *Preliminary Determination*.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will 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 steel threaded rod, or sales (or the likelihood of sales) for importation, of the merchandise under investigation, within 45 days of our final determination.

This determination is issued and published in accordance with sections 733(f), 735(a)(2), and 777(i) of the Act and sections 351.210(g) and 351.224(e) of the Department's regulations.

Dated: October 20, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8–25549 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–351–825

Stainless Steel Bar From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1757 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain stainless steel bar from Brazil for the period February 1, 2007, through January 31, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 16837 (March 31, 2008). The preliminary results of this administrative review are currently due no later than October 31, 2008.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month. See also 19 CFR 351.213(h).

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of October 31, 2008, for several reasons. Specifically, the Department has granted the respondent, Villares Metals S.A. (Villares), several extensions to respond to the original and supplemental questionnaires.[1] Thus, the Department needs additional time to review and analyze the responses submitted by Villares. Further, the Department requires additional time to review issues such as corporate affiliations and steel grades of products reported by Villares as it will affect the Department's matching methodology in this case. Therefore, we are extending the time period for issuing the preliminary results of this review by 90 days until January 29, 2009.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

Dated: October 17, 2008.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–25439 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period January 1 through June 30, 2008.

DATES: Comments must be submitted within thirty days after publication of this notice.

ADDRESSES: Written comments (original and six copies) should be sent to the Secretary of Commerce, *Attn:* Jill E. Pollack, Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jill E. Pollack, Office of the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4593.

SUPPLEMENTARY INFORMATION:

[1] See, *e.g.*, letters to Villares Metals S.A., from Laurie Parkhill, dated April 18, 2008, May 22, 2008, July 11, 2008, and July 30, 2008.

Background

On June 18, 2008, Section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidies provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies. As part of its report, Commerce intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

Request for Comment

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period January 1 through June 30, 2008. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that exports of softwood lumber from Brazil, Canada, Chile, and Germany each account for at least one percent of U.S. imports of softwood lumber products during that time period. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period July 1 through December 31, 2008, to select the countries subject to the next report.

Under U.S. law, a subsidy is defined as the situation in which a government authority: (i) Provides a financial contribution, (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994, or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred. *See* Section 771(5)(B) of the Tariff Act of 1930.

Parties should include in their comments: (1) The country which provided the subsidy, (2) the name of the subsidy program, (3) a brief (3–4 sentence) description of the subsidy program, and (4) the government body or authority that provided the subsidy.

Submission of Comment

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department also requests submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on CD–ROM with the paper copies or by e-mail to the Webmaster below.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Import Administration Web site at the following address: *http://ia.ita.doc.gov.* Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address: *webmaster-support@ita.doc.gov.*

All comments and submissions should be mailed to Jill E. Pollack, Office of the Deputy Assistant Secretary for Import Administration; Subject: Softwood Lumber Subsidies Bi-Annual Report: Request for Comment; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, by no later than 5 p.m., on the above-referenced deadline date.

Dated: October 22, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–25688 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK56

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; 2009 Fishing Quotas for Atlantic Surfclams and Ocean Quahogs

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

ACTION: Notice.

SUMMARY: NMFS is announcing that the quotas for the Atlantic surfclam and ocean quahog fisheries for 2009 remain status quo. Regulations governing these fisheries require NMFS to notify the public of the allowable harvest levels for Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone in the **Federal Register** if the previous year's quota specifications remain unchanged.

ADDRESSES: Written inquiries may be sent to Edward Stern, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Edward Stern, Fishery Management Specialist, (978) 281–9177; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS issue notification in the **Federal Register** of the upcoming year's quota, even in cases where the quota remains unchanged from the previous year. At its June 2008 meeting, the Mid-Atlantic Fishery Management Council voted that no action be taken to change the quota specifications for Atlantic surfclams and ocean quahogs for the 2009 fishing year (January 1 through December 31, 2009), and recommended maintaining the 2008 quota levels of 3.4 million bu (181 million L) for Atlantic surfclams, 5.333 million bu (284 million L) for ocean quahogs, and 100,000 Maine bu (3.524 million L) for Maine ocean quahogs, as announced in the **Federal Register** on January 4, 2008 (73 FR 820).

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

Dated: October 22, 2008.

Emily H. Menashes,

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

[FR Doc. E8–25585 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL41

Marine Mammals; File No. 10080

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Dr. Kathryn A. Ono, Department of Biological Sciences, University of New England, Biddeford, ME, has applied for an amendment to Scientific Research Permit No. 10080–02.

DATES: Written, telefaxed, or e-mail comments must be received on or before November 26, 2008.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/index.cfm*, and then selecting File No. 10080 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

Written comments or requests for a public hearing on this application should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 10080.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 10080–02 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 10080, issued on December 18, 2007, (72 FR 72996), and subsequently amended on January 31, 2008, (Permit No. 10080–01 was a minor amendment, which required no **Federal Register** notice) and on April 8, 2008 (73 FR 22931) authorizes the permit holder to examine expanding populations of the Western North Atlantic stocks of harbor seals (*Phoca vitulina concolor*) and gray seals (*Halichoerus grypus*) in the Gulf of Maine. In addition to capture and sampling activities, the permit authorizes harassment of gray seals incidental to boat approaches to seals on haul outs. The current version of the permit, Permit No. 10080–02, is valid through December 31, 2012.

The permit holder is requesting the permit be amended to include authorization to: (1) remotely mark the pelage of adult gray seals of both sexes (200 per year) using the various dyes and paints already permitted for use on pups; (2) use an additional type of marking agent, an alcohol based- dye (Rhodamine B 500%), on pups and adults; (3) disturb an additional 400 non-target gray seals per year during the additional marking activities; and (4) disturb an additional 300 gray seals annually during field camp operations associated with conduct of the research. The permit holder also requests permission for the incidental research-related mortality of up to four gray seal pups annually.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 22, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–25560 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Closed Meeting of the Chief of Naval Operations Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** on October 2, 2008, announcing a closed meeting of the Chief of Naval Operations Executive Panel. The original publication contained incorrect information.

FOR FURTHER INFORMATION CONTACT: CDR David Di Tallo, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, telephone: 703–681–4908.

Correction

In the **Federal Register** of October 2, 2008, in FR Doc. E8–23227, make the following changes:

1. In the first column, on page 57342, correct the **SUMMARY** caption to read as follows:

''**SUMMARY:** The Chief of Naval Operations (CNO) Executive Panel will report on the findings and recommendations of the Subcommittee on Africa to the Chief of Naval Operations. The matters to be discussed during the meeting have been divided into the following four categories: Threats to U.S. security and interests in Africa; political, economic, and security assessments of key African nations and institutions; U.S. Navy security cooperation and engagement strategies; and a conclusion/summary of the classified discussions.

The CNO Executive Panel will report on the findings and recommendations of the Subcommittee on the Navy's Next Big Thing to the Chief of Naval Operations. The matters to be discussed during the meeting have been divided into the following three categories: Technological, organizational, and process related; and a conclusion/summary of the classified discussions.

Each topic under each of these headings is classified either secret or

confidential, which makes this information exempt from open meeting disclosure pursuant to 5 U.S.C. Section 552b(c)(1).''

2. In the first column, on page 57342, correct the **DATES** caption to read as follows:

DATES: The meeting will be held on October 27, 2008 from 8:30 a.m. to 4:30 p.m. and 12 p.m. to 2 p.m.

Dated: October 21, 2008.

T. M. Cruz

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–25541 Filed 10–24–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 26, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 21, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Quarterly Cumulative Caseload Report (RSA–113).

Frequency: Quarterly.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.
Burden Hours: 320.

Abstract: State agencies that administer vocational programs provide key caseload data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and also their program outcomes. The Rehabilitation Services Administration (RSA) collects this information quarterly from states and reports it in the Annual Report to Congress on the Rehabilitation Act.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3873. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–25490 Filed 10–24–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 26, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including

through the use of information technology.

Dated: October 21, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Early Childhood Longitudinal Study Kindergarten Class of 2010–2011.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 54,190

Burden Hours: 99,855.

Abstract: The ECLS–K 2010–2011 is the follow-up study to the ECLS-K. It is a longitudinal study that will follow children from kindergarten through fifth grade to measure child development, school readiness and early school experiences. It will include cognitive assessments of children on an annual basis, parent interviews, and surveys of teachers, school administrators and the primary care provider.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3872. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–25491 Filed 10–24–08; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA State plans previously submitted by Idaho, Iowa, and Pennsylvania.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is Idaho's first revision to its State plan; Iowa's second revision to its State plan; and Pennsylvania's third revision to its State plan.

The revised State plans from Idaho, Iowa, and Pennsylvania address changes in the respective budgets of the previously submitted State plans and account for the use of Fiscal Year 2008 requirements payments. In accordance with HAVA section 254(a)(12), all the State plans submitted for publication provide information on how the respective State succeeded in carrying out its previous State plan. The States all confirm that these changes to their respective State plans were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from October 27, 2008, the State is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C).

EAC wishes to acknowledge the effort that went into revising these State plans and encourages further public comment, in writing, to the State election officials listed below.

Chief State Election Official

The Honorable Ben Ysursa, Secretary of State, P.O. Box 83720, Boise, Idaho 83720–0080, Phone: (208) 334–2852, Fax: (208) 334–2282.

The Honorable Michael A. Mauro, Secretary of State, 1007 East Grand Avenue, Room 105, State Capitol, Des Moines, IA 50319, Phone: (515) 281–5204, Fax: (515) 242–5952.

The Honorable Pedro A. Cortés, Secretary of the Commonwealth, 302 North Office Building, Harrisburg, Pennsylvania 17120, Phone: (717) 787–8727, Fax: (717) 787–1734.

Thank you for your interest in improving the voting process in America.

Dated: October 21, 2008.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

Office of the Iowa Secretary of State

Michael A. Mauro, Secretary of State, Lucas Building, 1st Floor, Des Moines, IA 50319.

September 10, 2008.

Edgardo Cortes,

Acting Director, Election Administration Support Division, U.S. Election Assistance Commission, 1225 New York Ave., NW., Ste. 150, Washington, DC 20005.

RE: Iowa Revised State Plan.

Dear Mr. Cortes:

Enclosed is the Revised HAVA State Plan for Iowa. The Plan only addresses the sections of the original Plan that have been revised. All other sections remain the same.

Please let Ann Clary know if additional information is required or if you have any questions. Ann may be contacted at 515–281–8361 or *ann.clary@sos.state.ia.us.*

Your assistance with this process is greatly appreciated.

Sincerely,

Michael Mauro,

Secretary of State.

Enclosure.

Phone 515–281–5204; Fax 515–242–5953; *http://www.sos.state.ia.us. sos@sos.state.ia.us.*

Section 12: Changes to State Plan From Previous Fiscal Year

Plan Element 12. In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

The initial Iowa State Plan was adopted in 2003 and amended in 2005. This amendment reflects changes in the plan in anticipation of the receipt of additional requirements payments in 2008.

Section 1: State Plan Required Elements

301. Voting Systems Standards

In 2005 and 2006 Iowa completed the purchase and deployment of HAVA-compliant voting systems in 96 of 99 counties. Three counties, in anticipation

of additional improvements to voting equipment chose to lease HAVA-compliant equipment. The equipment purchased and leased falls into the following categories:

Type of voting system	Number of counties
All-DRE	19
Blended systems: Optical scan with DRE for accessibility	59
Optical scan with ballot marking device for accessibility	21

Replace DRE Voting Systems With Optical Scan Voting Systems

In 2008 the State of Iowa changed its voting equipment laws to prohibit use of DRE voting equipment and mandated that the counties replace all DREs with optical scan voting systems and accessible ballot marking devices. This change must be implemented for the November 4, 2008, General Election. *See Appendix A: Senate File 2347.*

The 2008 requirements payment will be used to purchase optical scan voting systems with ballot marking devices for three counties that have not yet purchased voting equipment using HAVA funds. Remaining HAVA funds will be used to replace DRE voting equipment in 78 Iowa counties. The DRE voting equipment will be replaced with optical scan systems (in all-DRE counties) and ballot-marking devices to provide nonvisual accessibility for blind and visually impaired voters in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters, as required by HAVA section 301(a)(3). One optical scan device and one ballot-marking device will be provided for each general election precinct in the all-DRE counties. Optical scan devices will also be purchased for tabulation of absentee ballots.

Meeting Accessibility Requirements

All DRE voting equipment that was purchased to satisfy the HAVA accessibility requirements will be replaced with ballot marking devices to provide nonvisual accessibility for blind and visually impaired voters in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters, as required by HAVA section 301(a)(3). Ballot-marking devices will be purchased for in-person absentee voters in the 78 counties changing from DREs. In addition, ballot-marking devices will be purchased for five counties currently using optical scan systems that had not previously purchased ballot-marking devices for use by in-person absentee voters.

Voting Equipment Technical Support Services

This section of the Plan is rescinded. The Secretary of State did not implement this program in the original plan. This program is described in the original plan as follows: To assist with the conversion process to DRE based systems in the lever counties and in each precinct to meet accessibility requirements, it is recommended that a technical support staff with extensive training on the prevalent voting equipment be established. The technical support services shall initially be funded entirely with HAVA funds. After the establishment of the program the funding will be re-evaluated and funding this position through a county and state partnership will be considered.

302. Provisional Voting and Voting Information Requirements

Iowa has met the requirements of section 302.

303. Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register by Mail

Iowa has met the requirements of section 303 and continues to use HAVA funds for maintenance of the system. No change from previous plan.

304. Minimum Requirements

No change to this section.

305. Methods of Implementation Left to Discretion of State

No change to this section.

312. Adoption of Voluntary Guidance by Commission

No change to this section.

251(b)(2) Other Activities

No change to this section.

Section 2: Distribution of Requirements Payments

The State will purchase the voting equipment necessary to replace all DREs in the state and will transfer ownership of the equipment to the counties. The HAVA 2008 Requirements Payment will be used to reimburse the Rebuild Iowa Infrastructure Fund for part of the cost of the voting equipment.

PROGRAM COSTS

Description	Costs	Resources
1 Voting equipment, Premier	$8,577,155.00	
2 Voting equipment, ES&S	$1,181,940.00	
3 Total initial cost	$9,759,095.00	
Less vendor discounts & credits:		
4 Premier: Quantity	$250,000.00	
5 Premier: Trade-in	$455,100.00	
6 Premier: lease credit	$428,000.00	
7 ES&S: Trade-in	$32,230.00	
8 Total discounts & credits	$1,165,330.00	
9 Final cost of equipment	$8,593,765.00	
State match for 2008 Req. Pmt.	$61,000.00	
Total Project Amount	$8,654,765.00	
10 Current remaining HAVA budget for 3 counties		$1,618,386.00
11 Remaining HAVA equipment budget		$135,499.00
12 Total existing HAVA equipment		$1,753,885.00
13 State appropriation 2007		$2,000,000.00
14 State appropriation 2008		$4,900,880.00

PROGRAM COSTS—Continued

Description	Costs	Resources
15 Total state appropriation		$6,900,880.00
16 Current available funding		$8,654,765.00
2008 Requirements payment		$1,167,798.00

The Iowa General Assembly has appropriated a total of $6,900,880 to fund the purchase of optical scan voting systems and ballot marking devices with the condition that any federal funds that are received will be used to reimburse the fund from which those funds were appropriated.

Sixty-six percent of the project cost will be funded with state appropriations. Existing HAVA funds represent 20.25%; the 2008 requirements payment represents 13.49%.

The Secretary of State has adopted Administrative Rules defining the method of distributing and monitoring the funds for this program. See Appendix B.

Maintenance of Effort

Iowa has maintained the expenditures of the State for activities funded by the HAVA payments at a level that is not less than the level of such expenditures maintained by the State for the fiscal year July 1, 1999 through June 30, 2000.

Title I Funds

Iowa has no remaining funds received under HAVA Title I.

HAVA Plan Committee

Secretary of State Michael Mauro has appointed a new HAVA Plan Committee. The members are:

Jamie Fitzgerald, Polk County Auditor.

Joel Miller, Linn County Auditor.

Ken Kline, Cerro Gordo County Auditor and President of the Iowa State Association of County Auditors.

Rik Shannon, Governor's Developmental Disability Council, Department of Human Services, Des Moines.

Linda Langenberg, Deputy Secretary of State.

Appendix A

Senate File 2347
SENATE FILE _____
BY COMMITTEE ON APPROPRIATIONS
(SUCCESSOR TO SSB 3262)
Passed Senate, Date _____
Vote: Ayes _____ Nays _____
Passed House, Date _____
Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the use of optical scan voting systems in
2 every county, making an appropriation for the cost of
3 purchasing and distributing optical scan voting systems,
4 reducing certain appropriations, providing for continuing
5 education for certain election personnel, and providing an
6 effective date.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
8 SF 2347
9 sc:rj/cc/26

PAG	LIN	
1	1	Section 1. *NEW SECTION*. 47.10 OPTICAL SCAN VOTING SYSTEM
1	2	FUND.
1	3	An optical scan voting system fund is established in the
1	4	office of the treasurer of state under the control of the
1	5	secretary of state. Moneys in the fund are appropriated to
1	6	the office of the secretary of state for purchase and
1	7	distribution of optical scan voting system equipment to
1	8	counties to assist county compliance with section 52.2,
1	9	subsection 2. The secretary of state, in consultation with
1	10	the department of administrative services, shall establish a
1	11	procedure for purchasing and distributing the equipment.
1	12	Sec. 2. Section 49.124, Code 2007, is amended to read as
1	13	follows:
1	14	49.124 TRAINING COURSE BY COMMISSIONER—*CONTINUING*
1	15	*EDUCATION PROGRAM.*
1	16	*1.* The commissioner shall conduct, not later than the day
1	17	before each primary and general election, a training course
1	18	for all election personnel, and the commissioner may do so
1	19	before any other election the commissioner administers. The
1	20	personnel shall include all precinct election officials and
1	21	any other persons who will be employed in or around the
1	22	polling places on election day. At least two precinct
1	23	election officials who will serve on each precinct election
1	24	board at the forthcoming election shall attend the training
1	25	course. If the entire board does not attend, those members
1	26	who do attend shall so far as possible be persons who have not
1	27	previously attended a similar training course.
1	28	*2. A continuing education program shall be provided to*
1	29	*election personnel who are full-time or part-time permanent*
1	30	*employees of the commissioner's office. The state*
1	31	*commissioner of elections shall adopt rules pursuant to*
1	32	*chapter 17A to implement and administer the continuing*
1	33	*education program.*

PAG	LIN	
1	34	Sec. 3. Section 52.2, subsection 2, Code Supplement 2007,
1	35	is amended by striking the subsection and inserting in lieu
2	1	thereof the following:
2	2	2. Notwithstanding any provision to the contrary, for
2	3	elections held on or after November 4, 2008, a county shall
2	4	use an optical scan voting system only. The requirements of
2	5	the federal Help America Vote Act relating to disabled voters
2	6	shall be met by a county through the use of electronic ballot
2	7	marking devices that are compatible with an optical scan
2	8	voting system.
2	9	Sec. 4. Section 52.7, subsection 1, paragraph l, Code
2	10	Supplement 2007, is amended by striking the paragraph.
2	11	Sec. 5. OPTICAL SCAN VOTING SYSTEM FUND—APPROPRIATION.
2	12	There is appropriated from the rebuild Iowa infrastructure
2	13	fund to the office of the secretary of state for the fiscal
2	14	year beginning July 1, 2007, and ending June 30, 2008, the
2	15	following amount, or so much thereof as is necessary, to be
2	16	used for the purpose designated:
2	17	For deposit into the optical scan voting system fund, as
2	18	established in section 47.10, notwithstanding section 8.57,
2	19	subsection 6, paragraph "c":
2	20	..... $4,900,880
2	21	1. If any federal funding is received for the same or
2	22	similar purposes authorized in section 47.10, as enacted by
2	23	this Act, of the amount appropriated in this section, $61,000
2	24	is allocated for matching such federal funding, and an amount
2	25	equal to the federal funding received shall revert from the
2	26	amount appropriated to the rebuild Iowa infrastructure fund at
2	27	the end of the fiscal year.
2	28	2. Notwithstanding section 47.9, as of the effective date
2	29	of this Act, all remaining moneys in the voting machine
2	30	reimbursement fund established in section 47.9 shall be
2	31	transferred to the optical scan voting system fund established
2	32	in section 47.10. Notwithstanding section 8.33, except as
2	33	otherwise provided in subsection 1, the moneys appropriated
2	34	and transferred in accordance with this section shall not
2	35	revert to the fund from which appropriated or transferred.
3	1	3. On or before December 31, 2008, the secretary of state
3	2	shall submit a report to the chairpersons and ranking members
3	3	of the joint appropriations subcommittee on administration and
3	4	regulation regarding the expenditures of moneys from the
3	5	optical scan voting system fund and distribution of equipment
3	6	to counties appropriated in this section.
3	7	Sec. 6. [not applicable and omitted intentionally]
4	1	Sec. 7. [not applicable and omitted intentionally]
4	10	Sec. 8. Section 47.9, Code Supplement 2007, is repealed.
4	11	Sec. 9. EMERGENCY RULES. The secretary of state may adopt
4	12	emergency rules under section 17A.1, subsection 2, and section
4	13	17A.5, subsection 2, paragraph "b", to implement the
4	14	provisions of this Act relating to optical scan voting
4	15	systems, and the rules shall be effective immediately upon
4	16	filing unless a later date is specified in the rules. Any
4	17	rules adopted in accordance with this section shall also be
4	18	published as a notice of intended action as provided in
4	19	section 17A.4.
4	20	Sec. 10. EFFECTIVE DATE. This Act, being deemed of
4	21	immediate importance, takes effect upon enactment.
4	22	SF 2347
4	23	sc:rj/cc/26

Appendix B

Administrative Rules defining the method of distributing and monitoring the funds for this program.
ARC 6727B.

SECRETARY OF STATE [721]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code chapter 17A and 2008 Iowa Acts, Senate File 2347, section 9, the Secretary of State hereby amends Chapter 22, ''Voting Systems,'' Iowa Administrative Code.

The amendment to Chapter 22 rescinds and replaces rule 721–22.32(52), which was first adopted in 2007 to implement the addition of voter-verifiable paper audit trails to direct recording electronic (DRE) voting equipment currently in use in Iowa. In 2008, the General Assembly outlawed the use of DRE voting equipment and mandated its replacement with optical scan voting equipment and ballot-marking devices. New rule 721–22.32(52) provides a process for the purchase of the new voting equipment.

The Agency finds, in compliance with Iowa Code section 17A.4(2), that notice

and public participation are impracticable because 2008 Iowa Acts, Senate File 2347, which became effective on April 1, 2008, authorizes the Secretary of State to adopt emergency rules to implement the provisions of Senate File 2347 relating to optical scan voting systems.

The Agency also finds, pursuant to Iowa Code section 17A.5(2)''b''(1), that the normal effective date of this rule should be waived and this rule should be made effective upon filing with the Administrative Rules Coordinator on April 2, 2008, as authorized by 2008 Iowa Acts, Senate File 2347, section 9.

This rule is also published herein under Notice of Intended Action as ARC 6728B, as required by 2008 Iowa Acts, Senate File 2347, section 9, in order to allow for public comment.

The Secretary of State adopted this rule on April 2, 2008.

This rule became effective on April 2, 2008.

This rule is intended to implement 2008 Iowa Acts, Senate File 2347.

The following amendment is adopted.

Rescind rule 721–22.32(52) and adopt the following new rule in lieu thereof:

721–22.32(52) Optical scan voting system purchase program. The secretary of state shall negotiate with the voting system vendors who serve Iowa counties for a uniform price for each vendor's optical scan voting system components. Counties currently using all direct recording electronic (DRE) voting machines shall purchase one optical scan tabulator and one ballot-marking device for use in each general election voting precinct. Counties currently using an optical scan tabulator with a DRE voting machine as the accessible component in each precinct shall purchase one ballot-marking device for each precinct used in general elections to replace the DRE voting machine. Allocation agreements setting forth the amount of funding each county in need of optical scan voting equipment will be allocated shall be prepared by the secretary of state. The secretary of state, the vendor, and each county shall sign the allocation agreements.

22.32(1) Contractual agreements. Contracts for purchase shall be between the vendor and the county.

22.32(2) Distribution of equipment. The appropriate vendor shall deliver the equipment to each county with which the vendor has a contract for purchasing voting equipment.

22.32(3) Acceptance testing. Upon receipt of the voting equipment, the commissioner shall conduct acceptance testing pursuant to rule 721–22.31(52).

22.32(4) Documentation. The commissioner shall provide the following information to the secretary of state:

a. A report showing that the county has subjected all equipment to acceptance testing and that the equipment is acceptable.

b. A copy of the invoice showing the date the county received the equipment and the total cost of the equipment.

c. Counties currently using the AccuVote TSX DRE shall provide an affidavit showing that the AccuVote TSX DRE was returned to the vendor.

22.32(5) Payment. Upon receipt of the required information, the secretary of state shall pay the vendor the amount agreed to in the county allocation agreement.

This rule is intended to implement 2008 Iowa Acts, Senate File 2347.

[Filed Emergency 4/2/08, effective 4/2/08.]

[Published 4/23/08.]

State of Idaho

State Plan

As required by Public Law 107–252, Help America Vote Act 2002, Section 253 (b).

Ben Ysursa, Secretary of State, 700 West Jefferson, PO Box 83720, Boise, Idaho 83720–0080, (208) 334–2852.

Idaho Votes.

Every Vote Counts.

2004.

Amended 2008.

6. Idaho's HAVA Budget

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) The costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment, which will be used to carry out other activities.—HAVA Section 254(a)(6)

Section 101 money deposited into the Democracy Fund should be used in the following order of priority:

1. Statewide voter registration list
2. Voting System Replacement
3. Election Worker Training
4. State Plan Development and Compliance Monitoring

Grants available from U.S. Health and Human Services for polling place accessibility will continue to be applied for by the Secretary of State to develop training materials and to assist counties in meeting their accessibility needs.

Title II money received will be used to purchase equipment that meets the requirements of Title III, including the accessible voting device for the blind and visually impaired in each polling place, and will be deposited in the Democracy Fund to be made available to the various counties to upgrade or replace their voting systems. Funds will also be used to develop a statewide voter registration system and will also be deposited and maintained in the Democracy Fund to provide ongoing operation and support for the system.

The chart below lists the activities and costs of HAVA activities to be implemented in Idaho using both Title I and Title II monies for each activity. The chart reflects the dollars to be used if HAVA is fully funded and the state received its full share of the funds.

OVERALL HAVA COMPLIANCE BUDGET

HAVA requirement	Estimated cost	Title II funds	Title I funds
Statewide voter registration system development	$5,000,000	$4,500,000	$500,000
Statewide voter registration system operations and support	1,800,000	1,000,000	800,000
Accessible voting device for each polling place	6,300,000	6,300,000	.....
Voting system upgrade grant program for counties	6,300,000	3,000,000	3,300,000
Voter education and outreach	200,000	100,000	100,000
Election worker training	200,000	100,000	100,000
State plan development and HAVA compliance monitoring	200,000	.....	200,000

10. Effect of Title I Payments

If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.—HAVA Section 254(a)(10)

Section 101. Payments to States for activities to improve administration of elections.

Idaho is eligible for approximately $5 million under Section 101. These funds will be used for activities to meet the following requirements:

1. Statewide voter registration system	$500,000
2. On-going support of voter registration system	800,000
3. Voter Education	100,000
4. Election Worker Training	100,000
5. Plan development and administration	200,000
6. Voting System Upgrades	3,300,000
Total	5,000,000

Idaho is a ''minimum state'' for receiving HAVA funds. All of the funds received under Title I will be required to be used in meeting the requirements of Title III and to purchase replacement voting systems that meet the requirements of Title II.

12. Changes to State Plan From Previous Fiscal Year

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year.—HAVA Section 254(a)(12).

The 2004 Plan has been updated with this 2008 Amended Plan. Changes in the Plan consist of the following:

- Addition of $575,000 in Title II funds to provide full funding of the amount authorized by Congress under HAVA.
- Details the use of Title I and Title II funds to meet the requirements of HAVA.
- Changes the budget of the Title I funds

Summary of Successes to Date

The State of Idaho has been working diligently to address the requirements of HAVA. Below are some of the successes to date and the State's ongoing efforts to meet the requirements and improve federal elections.

Statewide Voter Registration System

In order to meet the requirement of HAVA Section 303, the State entered into a contract with Covansys (now Saber Government Solutions) to develop a statewide voter registration system. The contract included all application programming and hardware specifications, which were purchased separately, along with the conversion of each county's database to the statewide database and to provide access to each county elections office over a secure state intranet.

As with any new computer application, the system requires ongoing maintenance and support in order to achieve optimum performance and the State is working with the various counties and Saber to achieve that.

Accessible Voting Equipment

The State purchased a voter assistance device for each polling place in the state. The devices allow those with disabilities, including the blind and sight impaired, to vote privately and independently on an optical scan ballot.

Voting System Upgrades

Idaho uses three method of voting in federal elections: (1) Hand counted paper ballots, (2) punch cards and (3) optical scan ballots. In order to provide voting systems that meet the requirements of Section 301 of HAVA, the State has set up a grant program that allows the counties to request funding to upgrade their current system by purchasing new equipment. The grant program requires the counties to provide a 20% match to the money provided by the State.

Voter Education and Poll Worker Training

Idaho counties utilize both central count and precinct count vote tabulation. Since approximately one-third of the counties use hand count paper ballots and others use central count systems, an extensive voter education and poll worker education program has been set up and is ongoing to make certain that voters are instructed on the effect of casting multiple votes for an office, instructions on how to correct an error made in voting before the ballot is cast and the accessibility of polling places.

Training materials, including video presentations, have been developed or updated and distributed for instructing election workers on the proper setup and operations of the voter assistance device and to heighten the awareness and sensitivity of election workers to the special needs of the elderly and persons with disabilities.

13. State Plan Development and Committee

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the Committee under such section 255 and section 256.—HAVA Section 254(a)(13)

The HAVA State Planning Committee consists of individuals representing a cross-section of election stakeholders. The Committee was selected by Secretary of State Ben Ysursa.

Members of the State Planning Committee are as follows:

Dr. James Weatherby, Professor Emeritas, Boise State University, 1910 University Drive, Boise, Idaho 83725–1935;

Kelly Buckland, Idaho State Independent Living Council, 350 N. 9th Street, Ste. 102, PO Box 83720, Boise, Idaho 83702;

Dan English, Kootenai County Clerk, PO Box 9000, Coeur d'Alene, Idaho 83816–9000;

Rose Gehring, Idaho County Clerk, 320 w. Main, Rm. 5, Grangeville, Idaho 83530;

David Navarro, Ada County Clerk, 200 W. Front Street, Boise, Idaho 83702;

Barbara Roberts, Democratic Party, 1701 N. 21st., Boise, Idaho 83702;

Norm Semanko, Chairman, Idaho Republican State Party, P.O. Box 2267, Boise, Idaho 83701;

The Honorable Shirley Ringo, State Representative, Legislative District 6, STATEHOUSE MAIL;

The Honorable Ken Roberts, State Representative, Legislative District 8, STATEHOUSE MAIL;

Tony P.O.inelli, Association of Counties, P.O. Box 1623, Boise, Idaho 83701;

Dave Gipson, %Caxton Printers, 312 Main Street, Caldwell, Idaho 83605;

Sharon Widner, Washington County Clerk, P.O. Box 670, Weiser, Idaho 83672;

Eleanor Chehey, League of Women Voters, Boise, Idaho 83703;

Brian Kane, Office of the Attorney General, Statehouse, Boise, Idaho 83720;

Tim Hurst, Office of the Secretary of State, Statehouse, Boise, Idaho 83720;

Jim Mairs, Office of the Secretary of State, Statehouse, Boise, Idaho 83701.

Addendum to the Commonwealth of Pennsylvania State Plan as Required by Public Law 107–252

The Help America Vote Act

July 21, 2008

In accordance with Section 255 of the Help America Vote Act (HAVA) of 2002,

the Pennsylvania Department of State is pleased to file this addendum to Elements 6, 12 and 13 of the Commonwealth of Pennsylvania State Plan.

Element 6

Element 6 sets forth the Commonwealth's budget for activities under Part II of HAVA, based on an estimate of the costs of such activities and the amount of funds to be made available. The funding granted by the Omnibus Appropriations Act for Fiscal Year (FY) 2008 will provide an additional $4,919,086 in Title II funding to Pennsylvania, bringing the total allocation to Pennsylvania from this fund to $105,497,915.

The additional funds allocated to Pennsylvania under the Omnibus Appropriations Act for FY 2008 will be reserved for use by the Commonwealth government. The Commonwealth plans to expend the HAVA funds provided by the Election Assistance Commission for FY 2008 to improve efficiency and implement technological upgrades to Pennsylvania's Statewide Uniform Registry of Electors (SURE), the centralized voter registration database. The Commonwealth will spend an estimated $3,921,086 for SURE for the following: SURE system enhancements ($2,221.086), SURE P.O.rtal enhancements ($850,000), and SURE interface upgrades ($850,000). The Commonwealth plans to use the remaining $998,000.00 of its FY 2008 funds for administrative costs, including personnel and operating costs, to administer HAVA.

In its budget for FY 2008, the Commonwealth has budgeted an estimated $7,700,000 for the ongoing implementation, enhancement, and operation of SURE. This amount exceeds the 5% matching funds ($258,899) required in order to be eligible to receive these additional funds.

Elements 12 and 13

Under Elements 12 and 13 of the State Plan, the Commonwealth discusses the State Plan Advisory Board (Board) that was created by the Pennsylvania General Assembly under section 205 of the Pennsylvania Election Code to be the committee required by section 255 of HAVA to develop the State Plan. The Department relies on the supP.O.rt and consultation of the Board for continued success in reaching HAVA's goals and objectives. The original Board members served for a term of five years, which expired in 2007. As of July 7, 2008, the new Board members are as follows:

- Gladys M. Brown, Public At Large Member
- Elaine Welch, Blind & Visually Impaired Pennsylvanians
- Vice-Chair Deena K. Dean, Director of Elections, Bucks County (county of the second class A)
- Joyce McKinley, Director of Elections for Centre County (county of a fifth class county)
- Denise W. Jones, Chief Clerk/Director of Elections, Venango County (county of the sixth class)
- Sandra Lewis, Elections Director, P.O.tter County
- Patricia P. Nace, Director of Elections, Snyder County (county of the seventh class)
- Chair Robert Lee, Jr., Voter Registration Administrator, Philadelphia County (county of the first class)
- Thomas M. Michin, Legislative Committee Chairman, Disabled American Veterans of PA
- Robert A. Gleason Jr., Chairman, Republican State Committee of PA
- Leonard C. Piazza, III, Director of Elections, Luzerne County (county of the third class)
- Representative T.J. Rooney, Chair, Democratic State Committee of PA
- Larry Spahr, Director of Elections, Washington County (county of the fourth class)
- Josh Wilson, Public At Large Member
- Mark Wolosik, Division Manager for Elections, Allegheny County (county of the second class)

[FR Doc. E8–25455 Filed 10–24–08; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 19, 2008, 2 p.m.–8 p.m.

ADDRESSES: Jemez Complex, Santa Fe Community College, 6401 Richards Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

2 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Jeff Casalina.
Establishment of a Quorum, Lorelei Novak.
Welcome and Introductions, J.D. Campbell.
Approval of Agenda.
Approval of September 24, 2008 Board Meeting Minutes.
2:15 p.m. Old Business.
A. Written Reports.
B. Open Discussion.
2:30 p.m. New Business.
A. Open Discussion.
2:45 p.m. Consideration and Action on Recommendations to DOE.
3:45 p.m. Break.
4 p.m. Update from the New Mexico Environment Department, James Bearzi.
Update from the Environmental Protection Agency (Region 6), Rich Mayer.
4:45 p.m. Discussion with Los Alamos Site Office Manager, Don Winchell.
5 p.m. Dinner Break.
6 p.m. Public Comment Period.
6:15 p.m. Presentation from DOE.
A. Natural Resource Damages.
B. Other Items.
7:15 p.m. Open Discussion from Board Members, J.D. Campbell.
A. Press Releases, Editorials, etc.
B. Future Presentation Topics.
C. Other Items.
8 p.m. Adjourn, Jeff Casalina.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will

be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/minutes/board-minutes.htm.*

Issued at Washington, DC on October 20, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–25529 Filed 10–24–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, November 17, 2008, 1 p.m.–5 p.m.; Tuesday, November 18, 2008, 8:30 a.m.–4 p.m.

ADDRESSES: The Double Tree Hotel, 2651 Perimeter Parkway, Augusta, Georgia 30909.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, November 17, 2008

1 p.m. Combined Committee Session.
5 p.m. Adjourn.

Tuesday, November 18, 2008

8:30 a.m. Approval of Minutes, Agency Updates.
Public Comment Session.
Chair and Facilitator Updates.
Nuclear Materials Committee Report
Waste Management Committee Report.
Public Comment Session.
12 p.m. Lunch Break.
1 p.m. Strategic and Legacy Management Committee Report.
Administrative Committee Report.
Facility Disposition and Site Remediation Committee Report.
Public Comment Session.
4 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, November 17, 2008.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/srs-cab.html.*

Issued at Washington, DC on October 22, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–25530 Filed 10–24–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–FRL–8730–5]

Notice of Data Availability: The Toxicity of Selenium to Aquatic Life as Related to Developing a Recommended Aquatic Life Criterion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a technical report titled ''Effect of Selenium on Juvenile Bluegill Sunfish at Reduced Temperature.'' It describes the results from testing the toxicity of selenium to juvenile bluegill sunfish under winter temperature conditions. EPA is also making available a list of ''References for Selenium Chronic Toxicity Data Obtained Since 2004'', indicating other information that EPA has recently obtained. EPA may use the information announced here in the derivation of a selenium water quality criterion for protection of aquatic life.

DATES: Scientific information and views on the material cited herein should be submitted by November 26, 2008. Scientific views postmarked after this date might not be considered.

ADDRESSES: If you wish to submit information relevant to the material announced, you may do so by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting scientific views.
- *E-mail: OW-Docket@epa.gov.*
- *Mail:* U.S. Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 2822T; 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Ave., NW., EPA West, Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your scientific views to Docket ID No. EPA–HQ–OW–2004–0019. EPA's policy is that all scientific views received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact

you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm* for additional information about EPA's public docket.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Water Docket/EPA/DC, 1301 Constitution Ave., NW., EPA West, Room 3334, Washington, DC. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., EST, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Charles Delos, *delos.charles@epa.gov* or postal address, Mail Code 4304T, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Who might be interested in this information?

This information may be useful to scientists involved in selenium hazard assessment for aquatic life.

II. What is the relationship of this material to water quality criteria?

EPA may use the information announced here in the derivation of a water quality criterion for protection of aquatic life. Nevertheless, in part because the new information is only a portion of all data relevant to deriving a criterion, EPA's future criteria recommendations cannot be directly inferred from it.

III. What are EPA recommended water quality criteria?

EPA recommended water quality criteria are scientifically derived numeric values that protect aquatic life or human health from the deleterious effects of pollutants in ambient water. Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish and, from time to time, revise, recommended water quality criteria to accurately reflect the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. Section 304(a) criteria provide guidance to States and authorized Tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to EPA when promulgating federal regulations under section 303(c) when such action is necessary. EPA's recommended water quality criteria do not substitute for the CWA or regulations, nor are they regulations themselves. Thus, EPA's recommended criteria do not impose legally binding requirements. States and authorized Tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality standards that differ from these recommendations.

IV. Why did EPA perform the bluegill sunfish toxicity test?

On December 17, 2004 (69 FR 75541), EPA announced the availability of a draft revision of its currently recommended aquatic life water quality criteria for selenium, and solicited scientific information, data, and views thereon. Some of the responses from the public indicated that EPA's interpretation of a key study, involving juvenile bluegill sunfish under winter temperature conditions, was problematic due to limitations of the study design and lack of corroboration. To address these problems, EPA has undertaken and completed a new study, designed to establish an unambiguous threshold concentration for the effect. The document ''Effect of Selenium on Juvenile Bluegill Sunfish at Reduced Temperature'' in the docket for this notice describes this work. EPA intends to review any scientific information, data and views submitted in response to today's notice, along with the information previously submitted to EPA. For additional information on EPA's draft aquatic life water quality criterion for selenium, see *http://www.epa.gov/waterscience/criteria/selenium/.*

V. Why did EPA obtain the other information in its reference list?

With the intent that any future revision of the selenium criterion reflect the latest scientific information, EPA has searched the literature for new data. Interested persons have also submitted data to EPA. ''References for Selenium Chronic Toxicity Data Obtained Since 2004'' lists these studies.

Dated: October 9, 2008.

Ephraim S. King,

Director, Office of Science and Technology.

[FR Doc. E8–25519 Filed 10–24–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8734–6]

Reissuance of NPDES General Permits (GPs) for Log Transfer Facilities in Alaska; One GP Covers Log Transfer Facilities in Alaska that Received a Section 404 Permit Prior to October 22, 1985 (Permit Number AK–G70–0000); and Another GP for Other Log Transfer Facilities in Alaska that Meet Eligibility Requirements (Permit Number AK–G70–1000)

AGENCY: Environmental Protection Agency.

ACTION: Final Notice of Issuance of two general NPDES permits.

SUMMARY: The Director of the Office of Water and Watersheds, EPA Region 10, is publishing notice of the final National Pollutant Discharge Elimination System (NPDES) general permits (numbers AK–G70–0000 and AK–G70–1000) to provide Clean Water Act (33 U.S.C. 1251 *et seq.*) authorization for log transfer facilities (LTFs) operating in Alaska. General permit (GP) AK–G70–0000 (the ''Pre-1985'' GP) includes section 402 modifications to section 404 permits issued to LTFs prior to October 22, 1985, in accordance with section 407 of the Water Quality Act of 1987 (Pub. L. 100–4). All other LTFs can apply to be authorized to discharge under AK–G70–1000 (the ''Post-1985'' GP) if they meet eligibility requirements.

The final Post-1985 GP is a reissuance of a previously issued LTF GP that became effective on March 21, 2000, and was subsequently modified on April 27, 2004 (69 FR 19417). The Post-1985 GP expired on March 21, 2005, and has been administratively extended since that time. The final Pre-1985 GP contains additional modifications to section 404 permits issued to LTFs prior to October 22, 1985. The modifications implemented by the Pre-1985 GP became effective as of April 27, 2004, and such modifications did not expire because the section 404 permits have no expiration date. Because EPA is using a

section 402 permit to implement the section 404 permit modifications, the Pre-1985 GP will expire in accordance with 40 CFR 122.46(a). In the Pre-85 GP, if a facility meets the eligibility criteria, the facility timely submitted a new Notification at least 180 days prior to March 21, 2005, and unless LTF operations have materially changed since submission of that Notification, the operator of that facility is not required to submit a new Notification, but may: (i) Adopt the previously filed Notification in a written adoption letter to EPA and Alaska Department of Environmental Conservation (''ADEC'') no later than 90 days after the effective date of this permit; and (ii) in that adoption letter include the information required by subparagraphs D.4.d and D.4.e of Section IV. If a facility timely did not submit a Notification at least 180 days prior to March 21, 2005, written Notification must be submitted to EPA and ADEC within 90 days of the effective date of this general Permit. If a facility has not operated since March 7, 2000, and wishes to begin operations more than 90 days after the effective date of this Pre-85 permit, the facility must provide the Notification required by Section IV, to EPA and ADEC no later than 60 days prior to beginning discharges (see Parts I.A. and IV. of the Pre-85 GP).

In the Post-85 GP, owners or operators of a new LTF seeking authorization to discharge under this general permit must submit a NOI to EPA and ADEC at least sixty (60) days prior to anticipated commencement of operation and discharge (see Part V.C). For an existing LTF, if a facility timely submitted an NOI under 40 CFR 122.6 at least 180 days prior to the expiration of the previously issued general permits and unless LTF operations have materially changed since submission of that NOI, the operator of that facility is not required to submit a new NOI, but may: (i) Adopt the previously filed NOI in a written adoption letter to EPA and ADEC no later than 60 days after the effective date of this permit; and (ii) in that adoption letter, include the information required by subparagraphs D.4.d. and D.4.e of Part V. (see Part V.C of the Post-85 GP).

A fact sheet has been prepared which sets forth the principle factual, legal, policy, and scientific information considered in the development of the general permits. Both GPs contain a combination of technology-based requirements, best professional judgment and water quality-based effluent limits, standards, or conditions.

EPA received comments on the GPs during the public comment period, and has prepared a Response to Comments to explain changes made in the permits based on the comments and reasons for not making changes.

DATES: The GPs will become effective on December 1, 2008. The permits will expire on November 30, 2013.

Public Comment: Pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342, EPA proposed to reissue the general permits and solicited comments on the draft general permits in the **Federal Register** on July 31, 2007. Notices of the draft general permits were also published in the Anchorage Daily News and the Ketchikan Daily News on July 27, 2007. There was a 60-day public comment period from July 27, 2007, to September 25, 2007. On September 6, 2007, EPA and ADEC held a Public Meeting and a Public Hearing concerning the then proposed GPs in Centennial Hall and Convention Center in Juneau, Alaska.

ADDRESSES: Copies of the GPs and the Response to Comments may be requested from Audrey Washington, EPA Region 10, 1200 Sixth Avenue, Suite 900, OWW–130, Seattle, WA 98101 or by e-mail to: *washington.audrey@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the general permits, fact sheet, and response to comments are available on the EPA Region 10 Web site at *http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/General+NPDES+Permits*. They can also be requested by phone from Audrey Washington at (206) 553–0523.

SUPPLEMENTARY INFORMATION:

State Water Quality Standards and State Certification

On October 10, 2008, ADEC provided two certifications that both GPs would comply with section 401 of the Clean Water Act. ADEC also certified that the permits would comply with the Alaska State Water Quality Standards (Alaska Administrative Code 18 AAC70), including the State's antidegradation policy.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) at 42 U.S.C. 4322, requires Federal agencies to conduct an environmental review of their actions (including permitting activity) that may significantly affect the quality of the human environment. EPA regulations which implement NEPA (40 CFR 6) clarify this requirement as it pertains to NPDES permitting actions for new sources of discharge types with promulgated effluent limitation guidelines. No effluent limitation guidelines have been proposed or promulgated for discharges from LTFs pursuant to CWA Section 306, thus, new LTFs that may seek to discharge under the proposed GPs do not meet the criteria for new sources. Therefore, a NEPA environmental review is not required for the permits.

Endangered Species Act

Section 7 of the Endangered Species Act requires EPA to consult with the U.S. Fish and Wildlife Service and NOAA Fisheries regarding the potential effects that an action may have on listed endangered or threatened species or their critical habitat. To address these ESA requirements, and in support of EPA's informal consultation with the Services, a Biological Evaluation (BE) was prepared to analyze these potential effects. During the development of the draft general permits, information provided by the Services was used to identify 12 species of interest for consideration in the BE. The results of the BE concluded that discharges from LTFs will either have no effect or are not likely to adversely affect threatened or endangered species in the vicinity of the discharge. The fact sheet, the draft permits and the BE had been mailed to the Services for consistency with those programs established for the conservation of endangered and threatened species.

Magnuson-Stevens Fishery Conservation and Management Act

Section 305(b) of the Magnuson-Stevens Act [16 U.S.C. 1855(b)] requires Federal agencies to consult with NOAA Fisheries when any activity proposed to be permitted, funded, or undertaken by a Federal agency may have an adverse effect on designated Essential Fish Habitat (EFH) as defined by the Act. To address the requirements of the Magnuson-Stevens Act, EPA prepared an EFH Assessment concluding that LTF operations are not likely to have an adverse effect on EFH as the total area likely to be adversely impacted is an extremely small proportion of the total available habitat.

Alaska Coastal Management Program

The State of Alaska, Department of Natural Resources (ADNR), Office of Project Management and Permitting (OPMP), reviewed this permitting action for consistency as provided in section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended [16 U.S.C. 1456(c)(3)]. EPA has determined that the activities authorized by the proposed GPs are consistent to the maximum extent practicable with the state's Coastal Zone

Management Plan. On November 6, 2007, EPA received concurrence from the ADNR OPMP prior to issuing the final permits.

Executive Order 12866

EPA has determined that these GPs are not ''significant regulatory action'' under the terms of Executive Order 12866 and are therefore not subject to OMB review.

Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. Although general permits are considered to be adjudications and not rules and therefore are not legally subject to the Regulatory Flexibility Act, as a matter of policy EPA is evaluating on an individual basis whether or not a specific general permit would have a significant economic impact on a substantial number of small entities. Upon considering EPA's current guidance, entitled *Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act*, and the fact that each of these general permits affects less than 100 facilities, EPA concludes that these general permits do not have a significant economic impact on a substantial number of small entities and that the RFA does not call for further quantitative analysis of impacts.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' (defined to be the same as ''rules'' subject to the RFA) on tribal, state, and local governments and the private sector. However, general NPDES permits are not ''rules'' subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the UMRA.

Appeal of Permits

Any interested person may appeal the general permits in the Federal Court of Appeals in accordance with Section 509(b)(1) of the Clean Water Act. This appeal must be filed within 120 days after the permit effective date. Persons affected by the permits may not challenge the conditions of the permits in further EPA proceedings (See 40 CFR 124.19). Instead they may either challenge the permit in court or apply for an individual NPDES permit.

Signed this 20th day of October, 2008.

Michael F. Gearheard,

Director, Office of Water and Watersheds, Region 10.

[FR Doc. E8–25577 Filed 10–24–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8734–1]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting; Request for Comments.

SUMMARY: *Notice of Meeting*—Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NACEPT is a committee of individuals who represent diverse interests from academia, industry, non-governmental organizations, and local, state, and tribal governments.

The purpose of the meeting is to discuss the draft findings from NACEPT's 20th anniversary report, sustainable water infrastructure, biofuels, EPA's 2009–2014 Strategic Plan Change Document, and EPA's Draft Information Access Strategy. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/cal-nacept.htm*.

Request for Comments—In recognition of its 20th anniversary in 2008, NACEPT is preparing two reports that seek to: (1) Identify the issues and challenges EPA will face and should focus on over the next 5–10 years (''prospective report''), and (2) review NACEPT's activities and accomplishments during its 20-year history (''retrospective report'').

For the prospective report (#1 above), EPA has begun gathering input on the following ten questions about future environmental issues and trends and EPA's role in addressing them.

1. What do you consider to be the most influential long-term trends or forces (whether social, economic, technological, or otherwise) that are most likely to impact the environment over the next ten years?
2. What is your opinion on whether EPA is adequately addressing these trends or developments?
3. What steps could EPA take to improve its ability to anticipate and address these trends and related issues?
4. What do you consider to be the top environmental issues or challenges that the EPA must address in the next 10 years?
5. What might limit the Agency's ability to respond to the identified issues?
6. What are some specific steps that the Agency could take to respond to the issues and overcome the constraints?
7. What might the Agency look like ten years from now and what major changes in the way the Agency currently operates should be implemented now to achieve this ten year vision?
8. Over the next ten years, how would you define success for the EPA?
9. What measures would indicate success or failure for the Agency in the next ten years?
10. Is there anything else that you would like to add?

The initial findings that have emerged from the input received thus far include the following:

- Climate change presents a challenge that will require substantial EPA involvement over the next ten years and beyond.
- EPA does or should play a pivotal role as the nation's leading source of environmental science and technology and should foster collaborative and cooperative relationships with all public and private sector interests.
- Some factors that will influence the degree to which EPA is successful over the next ten years remain largely beyond the Agency's control.

The draft prospective report will be posted at *http://epa.gov/ocem/nacept/reports/index.html*. You may send your comments to Sonia Altieri at the contact information listed below. EPA will review the comments received, but will not respond to individual comments.

DATES: NACEPT will hold a two-day meeting on Thursday, November 13, 2008, from 9:30 a.m. to 6:30 p.m. and Friday, November 14, 2008, from 8:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Gaylord National Resort and Convention Center, 201 Waterfront Street, National Harbor, MD 20745. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov*, (202) 564–0243, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above. All requests must be submitted no later than November 7, 2008.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202–564–0243 or *altieri.sonia@epa.gov*. To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 16, 2008.

Megan Moreau,

Acting, Designated Federal Officer.

[FR Doc. E8–25411 Filed 10–24–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8734–7]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the R&H Oil/Tropicana Superfund Site in San Antonio, Bexar County, Texas.

The settlement requires the four (4) settling parties to pay a total of $5,271.47 as payment of response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to Sections 106 and 107 of CERCLA, 42, U.S.C. 9606 and 9607. The settlement amount for each party is a reduced amount based on ability-to-pay analyses.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before November 26, 2008.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Kevin Shade, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–2708. Comments should reference the R&H Oil/Tropicana Superfund Site in San Antonio, Bexar County, Texas, and EPA Docket Number 06–06–08, and should be addressed to Kevin Shade at the address listed above.

FOR FURTHER INFORMATION CONTACT: I-Jung Chiang, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–2160.

Dated: October 17, 2008.

Richard E. Greene,

Regional Administrator (6RA).

[FR Doc. E8–25581 Filed 10–24–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS)

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 33, *Pensions, Other Retirement Benefits, and Other Post-employment benefits: Reporting Gains and Losses from Changes in Assumptions and Selecting Discount Rates and Valuation Dates.*

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in April 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standard 33, *Pensions, Other Retirement Benefits, and Other Post-employment benefits: Reporting Gains and Losses from Change in Assumptions and Selecting Discount Rates and Valuation Dates.*

A summary of the standard follows: The standard highlights gains and losses from changes in assumptions in federal financial reports. Some of the most significant changes in amounts on the statement of net cost for the consolidated Financial Report of the United States Government (CFR) and for certain component entities can result from such gains and losses.

Copies of the standard can be obtained by contacting FASAB at 202–512–7350. The standard is also available on FASAB's home page *http://www.fasab.gov/.*

FOR FURTHER INFORMATION CONTACT: Wendy M. Payne, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: October 20, 2008.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. E8–25348 Filed 10–24–08; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 2008.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Yadkin Valley Financial Corporation, Elkin, North Carolina, to acquire 100 percent of the voting shares of, and thereby merge with American Community Bancshares, Inc., and thereby indirectly acquire voting shares of American Community Bank, Monroe, North Carolina.

Board of Governors of the Federal Reserve System, October 22, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–25510 Filed 10–24–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E8-24173) published on page 60285 of the issue for Friday, October 10, 2008.

Under the Federal Reserve Bank of Kansas City heading, the entry for Lindoe, Inc., Ordway, Colorado, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Lindoe, Inc., Ordway, Colorado, to acquire 51 percent of the voting shares of Southern Colorado National Bancorporation, Inc., and thereby indirectly acquire voting shares of Southern Colorado National Bank, both of Pueblo, Colorado.

Comments on this application must be received by November 6, 2008.

Board of Governors of the Federal Reserve System, October 22, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–25509 Filed 10–24–08 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 081 0133]

Reed Elsevier NV, Reed Elsevier PLC, Reed Elsevier Group plc, Reed Elsevier Inc., ChoicePoint Inc., ChoicePoint Services Inc., and ChoicePoint Government Services LLC; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 29, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Reed Elsevier ChoicePoint, File No. 081 0133,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-ChoicePoint*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/public comments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*)

FOR FURTHER INFORMATION CONTACT: Brendan McNamara, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-3703.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 16, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/09/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Reed Elsevier NV, Reed Elsevier PLC, Reed Elsevier Group plc, and Reed Elsevier Inc. (collectively ''Reed Elsevier''), and ChoicePoint Inc., ChoicePoint Services Inc., and ChoicePoint Government Services LLC (collectively ''ChoicePoint''). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from Reed Elsevier's proposed acquisition of ChoicePoint in the U.S. market for electronic public records services to law enforcement customers. Under the terms of the proposed Consent Agreement, Reed Elsevier and ChoicePoint are required to divest assets related to ChoicePoint's AutoTrackXP and Consolidated Lead Evaluation and Reporting (''CLEAR'') electronic public records services.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

Pursuant to an Agreement and Plan of Merger dated February 20, 2008, Reed Elsevier has agreed to acquire ChoicePoint for approximately $4.1 billion (''Proposed Acquisition''). The Commission's complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the market for electronic public record services sold to law enforcement customers in the United States. The proposed Consent Agreement would remedy the alleged violations by replacing the competition that would be lost in this market as a result of the Proposed Acquisition.

II. The Parties

Reed Elsevier is a worldwide, leading information services provider and publisher with headquarters in London, Amsterdam, and New York. Reed Elsevier's LexisNexis division provides information and risk management products and services to financial, business, law enforcement, and government customers. LexisNexis's Risk and Information Analytics Group (''RIAG'') provides public records services and risk management and information analytics applications designed to assist customers in managing risk through fraud detection and prevention, identity authentication and verification, and background screening. Reed Elsevier reported revenues of 4.6 billion ($9.3 billion) for 2007.

ChoicePoint, headquartered in Alpharetta, Georgia, is a leading provider of a variety of services used by customers to manage economic risk. ChoicePoint has four primary service groups: Insurance Services, Screening and Authentication Services, Business Services, and Marketing Services. For 2007, ChoicePoint reported revenues of $982 million.

III. Electronic Public Records Services to Law Enforcement Customers

Electronic public records encompasses a wide array of public and non-public records about individuals and businesses, including credit header data, criminal records, motor vehicle records, property records, and employment records. Electronic public records service providers such as LexisNexis and ChoicePoint compile these records, either by going directly to the source or by purchasing these records from third parties, and present them to end users via an online, web-based interface.

Law enforcement customers utilize electronic public records services as an investigatory tool in complex criminal investigations, such as combating terrorism, locating fugitives, and detecting illegal drug transactions. Unlike other consumers of electronic public records services, such as collections agencies who use these services for simple and discrete tasks such as locating an individual, law enforcement customers use electronic public records services to uncover previously unknown information and to generate leads in their investigations. Law enforcement customers, therefore, only work with electronic public records services providers with the most comprehensive, up-to-date, and accurate records available, as deficiencies in the underlying database could cost them a critical lead in an investigation. In addition to demanding the most complete database of electronic public records, law enforcement customers require that the provider have sophisticated search algorithms, sometimes called analytics, that identify and display non-obvious relationships between records.

The relevant geographic market in which to assess the impact of the Proposed Acquisition is the United States. Market participants indicate that successful participation in this market requires an established U.S. sales and support presence. As a practical matter, there are no firms serving non-U.S. customers that a law enforcement customer located in the United States could turn to as an alternative.

The market for electronic public records services to law enforcement customers is highly concentrated, with LexisNexis, primarily through its Accurint for Law Enforcement service, and ChoicePoint, with its AutoTrackXP service, accounting for over 80 percent of this approximately $60 million market. The Proposed Acquisition would significantly increase market concentration and eliminate substantial competition between the only two significant suppliers of electronic public records services to law enforcement customers in the United States.

The anticompetitive implications of such a dramatic increase in concentration are buttressed by evidence of intense head-to-head competition that would be lost with the Proposed Acquisition. Law enforcement customers have benefitted from the rivalry between LexisNexis and ChoicePoint in the form of lower prices, improved products, and better service and support. In addition, this fierce competition prompted ChoicePoint to introduce CLEAR—a new and advanced electronic public records service—designed specifically for law enforcement customers. Left unremedied, the Proposed Acquisition likely would cause anticompetitive harm by enabling LexisNexis to profit by unilaterally raising the prices of electronic public records services to law enforcement customers, as well as reducing its incentives to innovate and develop new services.

New entry or fringe expansion into the market for the sale of electronic public records services to law enforcement customers sufficient to deter or counteract the competitive effects of the proposed transaction is unlikely to occur within two years. Firms existing in the market would need to improve their software and

underlying analytics substantially, increase the breadth and depth of their public records data, and overcome the resistance of many law enforcement customers to switch to a product that lacks the track record of effectively serving the needs of the law enforcement community in order to seriously contend for the customers that currently work with LexisNexis or ChoicePoint. As a result, new entry or fringe expansion sufficient to achieve a significant market impact within two years is unlikely.

IV. The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's likely anticompetitive effects in the market for electronic public records services to law enforcement customers. The proposed Consent Agreement preserves competition by requiring the divestiture of assets related to ChoicePoint's AutoTrackXP and CLEAR electronic public records services to Thomson Reuters Legal Inc. (''West'') within fifteen (15) days after the Proposed Acquisition is consummated.

The Commission is satisfied that West is a well-qualified acquirer of the AutoTrackXP and CLEAR assets. West has the resources, capabilities, experience, and reputation to ensure that it will be an effective competitor in the market for electronic public records services to law enforcement customers. West, headquartered in Eagan, Minnesota, is a subsidiary of Thomson Reuters, one of the world's leading information service providers to the legal and business community. West already has a large and experienced sales force with existing relationships with many law enforcement agencies which use West's legal research services. With the divested assets, West will be particularly well-situated to replicate ChoicePoint's success and compete against the combined firm immediately after the Proposed Acquisition.

The proposed Consent Agreement contains several provisions designed to ensure that the divestiture of the AutoTrackXP and CLEAR assets to West is successful. First, the proposed Consent Agreement requires Reed Elsevier to provide various transitional services such as customer service, billing support, and database and network maintenance for up to two years to enable West to compete against Reed Elsevier immediately following the divestiture. Second, the proposed Consent Agreement ensures that Reed Elsevier will maintain the viability and marketability of the AutoTrackXP and CLEAR assets prior to the divestiture. Finally, the proposed Consent Agreement allows the Commission to appoint an Interim Monitor to ensure that Reed Elsevier fulfills all of its obligations related to the divestiture of the assets.

In order to ensure that the Commission remains informed about the status of the AutoTrackXP and CLEAR assets pending divestiture, and about the efforts being made to accomplish the divestiture, the proposed Consent Agreement requires Reed Elsevier to file periodic reports with the Commission until the divestiture is accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–25400 Filed 10–24–08: 8:45 am]

BILLING CODE 6750–01–S

GOVERNMENT ACCOUNTABILITY OFFICE

Medicare Payment Advisory Commission Nomination Letters

AGENCY: Government Accountability Office (GAO).

ACTION: Notice on letters of nomination.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. For appointments to MedPAC that will be effective May 1, 2009, I am announcing the following: Letters of nomination should be submitted between January 1 and March 31, 2009, to ensure adequate opportunity for review and consideration of nominees prior to the appointment of new members.

ADDRESSES:

GAO: 441 G Street, NW., Washington, DC 20548.

MedPAC: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: GAO: Office of Public Affairs, (202) 512–4800.

Authority: 42 U.S.C. 1395b–6.

Gene L. Dodaro,

Acting Comptroller General of the United States.

[FR Doc. E8–25358 Filed 10–24–08; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics

AGENCY: Department of Health and Human Services, Office of Public Health and Science, The President's Council on Bioethics.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Edmund D. Pellegrino, MD, Chairman) will hold its thirty-fifth meeting, at which it will discuss three topics: exercises of conscience in the practice of the health professions, the problem of medical futility, and the future of public bioethics and national bioethics commissions in the United States. Subjects discussed at past Council meetings (although not on the agenda for the November 2008 meeting) include: therapeutic and reproductive cloning, assisted reproduction, reproductive genetics, neuroscience, aging retardation, organ transplantation, personalized medicine, standards for the determination of death, children and bioethics, and lifespan-extension among others. Publications issued by the Council to date include: *Human Cloning and Human Dignity: An Ethical Inquiry* (July 2002); *Beyond Therapy: Biotechnology and the Pursuit of Happiness* (October 2003); *Being Human: Readings from the President's Council on Bioethics* (December 2003); *Monitoring Stem Cell Research* (January 2004), *Reproduction and Responsibility: The Regulation of New Biotechnologies* (March 2004), *Alternative Sources of Human Pluripotent Stem Cells: A White Paper* (May 2005), *Taking Care: Ethical Caregiving in Our Aging Society* (September 2005), and *Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics* (March 2008). Reports are forthcoming on four topics: controversies in the determination of death; organ donation, procurement, allocation, and transplantation; newborn screening; and medical care and the common good.

DATES: The meeting will take place Thursday, November 20, 2008, from 9 a.m. to 5 p.m., ET; and Friday, November 21, 2008, from 9 a.m. to noon, ET.

ADDRESSES: Hotel Palomar Arlington, 1121 North 19th Street, Arlington, VA 22209. Phone 703–351–9170.

FOR FURTHER INFORMATION CONTACT: Ms. Diane M. Gianelli, Director of Communications, The President's Council on Bioethics, 1425 New York Avenue, NW., Suite C100, Washington, DC 20005. Telephone: 202/296–4669. E-mail: *info@bioethics.gov*. Web site: *http://www.bioethics.gov*.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted at *http://www.bioethics.gov*. The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:45 a.m. on Friday, November 21. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane M. Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of her contact addresses given above.

Dated: October 17, 2008.

F. Daniel Davis,

Executive Director, The President's Council on Bioethics.

[FR Doc. E8–25564 Filed 10–24–08; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the 17th meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8 a.m. to approximately 5:30 p.m. on Monday, December 1, 2008, and 8 a.m. to approximately 3 p.m. on Tuesday, December 2, 2008, at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

For most of the first day of the meeting, SACGHS will review a preliminary draft report that addresses questions about whether gene patents and certain licensing practices are affecting patient access to genetic tests. SACGHS will discuss the draft report and determine whether it is ready to be released for public comment. Later in the day, the Committee will hear presentations about diagnostic laboratory standards and technology platforms and the role they are playing in innovation of genetic technologies. On day two, the Committee will continue to discuss priority issues and future study topics and come to a final decision about its strategic study plan.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov*. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting, who is in need of special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm*.

Dated: October 20, 2008.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. E8–25486 Filed 10–24–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Grants to States for Access and Visitation.

OMB No.: 0970–0204.

Description: On an annual basis, States must provide OCSE with data on programs that the Grants to States for Access and Visitation Program has funded. These program reporting requirements include, but are not limited to, the collection of data on the number of parents served, types of services delivered, program outcomes, client socio economic data, referrals sources, and other relevant data.

Respondents: State Child Access and Visitation Programs and State and/or local service providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Child Access Program Survey	314	1	15	4,710

Estimated Total Annual Burden Hours: 4,710.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for

ACE, E-mail address: *Karen_T._Matsuoka@omb.eop.gov*.

Dated: October 20, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–25419 Filed 10–24–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Intrapartum Electronic Fetal Monitoring With Computer Assisted Diagnosis Workshop—Exploring Methods of Evaluation

AGENCY: Food and Drug Administration, HHS

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Intrapartum Electronic Fetal Monitoring (EFM) With Computer Assisted Diagnosis (CAD)—Exploring Methods of Evaluation.'' The objectives of this workshop are to gather ideas on how to identify and differentiate categories of EFM/CAD devices and the corresponding levels of evidence needed to validate these devices. Workshop participants will also discuss how currently available databases might be used to verify/validate intrapartum EFM/CAD algorithms.

Date and Time: The workshop will be held on November 10, 2008, from 8 a.m. to 5 p.m. Registrations will be accepted through October 31, 2008. Participants are encouraged to arrive early to ensure time for parking, security screening, and registration before the meeting. Security screening will begin at 7 a.m. and registration will begin at 7:30 a.m. See *Registration Information* section of this document for registration details.

Location: The workshop will be held at the Food & Drug Administration White Oak Campus, conference room G–2047, 10903 New Hampshire Ave., Silver Spring, MD 20993.

FDA will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify one of the contacts listed in this document (see *Contact*) at least 7 days in advance of the workshop.

Contact: Sharon Andrews, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4148, FAX: 240–276–4156, *sharon.andrews@fda.hhs.gov;* or Elaine Blyskun, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4100, FAX: 240–276–4156, *elaine.blyskun@fda.hhs.gov*.

Registration Information: Registration may be completed online at the following Web site: *http://www.blsmeetings.net/1368-2*. There is no registration fee for this workshop; however, all participants must submit a registration form. Space is limited, so please register as soon as possible to reserve a space. Registrations will be accepted through (see **DATES**). Persons without Internet access may contact Syreeta Tate-Jones at 301–577–0244, ext. 49 by October 31, 2008, to register.

Agenda: The workshop will begin with a morning session to provide a clinical and regulatory overview of intrapartum fetal monitors. Presentation topics will address fetal monitoring in general, the relationship between technology and clinical decisionmaking, the current state of EFM/CAD development, and evaluation/validation methods that may be applied to new EFM/CAD systems. In the afternoon, attendees will break into two discussion groups: (1) EFM/CAD technological development and validation and (2) the practicality of using existing databases to test new EFM/CAD algorithms. The workshop will conclude with an overview of the break-out discussions and identification of research gaps and opportunities in the field.

Dated: October 20, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–25586 Filed 10–24–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

Date and Time: November 17, 2008, 8:30 a.m.–4:30 p.m. November 18, 2008, 8 a.m.–2 p.m.

Place: The Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, Maryland 20852.

Status: The meeting will be open to the public.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. At this meeting the Advisory Committee will work on its eighth report about the re-design of the delivery of primary health care and its implications for the training of primary care practitioners. Reports are submitted to Congress and to the Secretary of the Department of Health and Human Services.

Agenda: The meeting on Monday, November 17, will begin with opening comments from the Chair of the Advisory Committee and introductory remarks from senior management of the Health Resources and Services Administration. The Advisory Committee will elect a new chair and two vice-chairs prior to the main agenda. In the plenary session, the Advisory Committee will discuss key elements they wish to include in the eighth report, develop an outline for the report, and draft report recommendations. The work will be done in plenary session and in small groups. On Tuesday, November 18, the Advisory Committee will continue its work on the eighth report and determine next steps in the report preparation process. The members will plan an agenda for the next Advisory Committee meeting. An opportunity will be provided for public comment.

For Further Information Contact: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, M.D., PhD, Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6822. The Web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd*.

Dated: October 21, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–25569 Filed 10–24–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Dates and Times: November 13, 2008, 8 a.m.–4:30 p.m. November 14, 2008, 8 a.m.–4:30 p.m.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Rockville, MD 20817.

Status: The meeting will be open to the public.

Agenda: Agency and Bureau administrative updates will be provided.

Purpose: The purpose of this meeting will be to address issues relating to the nursing faculty shortage and its impact on nurse education and practice. The objectives of the meeting are: (1) To analyze achievements toward meeting recommendations that have been suggested to address the faculty shortage put forth in the National Advisory Council on Nurse Education and Practice: Second Report to the Secretary of Health and Human Services and the Congress; (2) to examine strategies instituted to address the faculty shortage; (3) to address the academic preparation of nurse educators; and (4) to address faculty salaries and any barriers to increasing faculty salaries.

During this meeting, the NACNEP council members will deliberate on the content presented and formulate recommendations to the Secretary of Health and Human Services and the Congress on the impact the faculty shortage is having on nursing education and practice. Members from professional nursing, public and private organizations will present their initiatives on addressing the nursing faculty shortage. Strategies on how to prepare nursing faculty for their role will be presented. This meeting will form the basis for NACNEP's mandated Ninth Annual Report.

For Further Information Contact: Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information can contact Nancy Douglas-Kersellius, Acting Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5688. Information can also be found at the following Web site: *http://bhpr.hrsa.gov/nursing/nacnep.htm.*

Dated: October 21, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–25568 Filed 10–24–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Method of Treating and Preventing Infections in Immunocompromised Subjects With Immunostimulatory CpG Oligonucleotides

Description of Technology: Primary disorders of the immune system can be divided into four categories, (1) disorders of the humoral immunity, (2) disorders of cellular immunity, (3) disorders of phagocytes, and (4) disorders of complement. In addition, there are many causes of secondary immunodeficiency such as treatment with immunosuppressive or chemotherapeutic agents, protein-losing enteropathy, and infection with a human immunodeficiency virus (HIV). Generally, immunocompromised patients are unable to mount an immune response to a vaccine or an infection in the same manner as non-immunocompromised individuals.

Opportunistic infections to which individuals infected with HIV are susceptible include bacterial infections such as salmonellosis, syphilis and neurosyphilis, tuberculosis (TB), a typical mycobacterial infection, and bacillary angiomatosis (cat scratch disease), fungal infections such as aspergillosis, candidiasis (thrush, yeast infection), coccidioidomycosis, cryptococcal meningitis, and histoplasmosis, protozoal infections such as cryptosporidiosis, isosporiasis, microsporidiosis, Pneumocystis Carinii pneumonia (PCP), and toxoplasmosis, viral infections such as Cytomegalovirus (CMV), hepatitis, herpes simplex (HSV, genital herpes), herpes zoster (HZV, shingles), human papilloma virus (HPV, genital warts, cervical cancer), Molluscum Contagiosum, oral hairy leukoplakia (OHL), and progressive multifocal leukoencephalopathy (PML), and neoplasms such as Kaposi's sarcoma, systemic non-Hodgkin's lymphoma (NHL), and primary CNS lymphoma, among others. These opportunistic infections remain principally responsible for the morbidity and mortality associated with HIV disease.

This application claims use of immunostimulatory D-type CpG oligonucleotides for the treatment of immunocompromised individuals. More specifically, the application claims use of immunostimulatory D-type CpG oligonucleotides for the treatment of individuals infected with HIV.

Application: Vaccine adjuvants, production of vaccines, immunotherapeutics.

Development Status: Preclinical studies have been performed; oligonucleotides have been synthesized.

Inventors: Dennis Klinman (FDA/CBER; NCI) and Daniela Verthelyi (FDA/CBER).

Patent Status: U.S. Provisional Application No. 60/411,944 filed 18 Sep 2002 (HHS Reference No. E–153–2002/0–US–01); U.S. Patent Application No. 10/666,022 filed 17 Sep 2003 (HHS Reference No. E–153–2002/0–US–03).

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Experimental Immunology, Immune Modulation Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Method of Treating Infectious and Inflammatory Lung Disease With Suppressive Oligonucleotides

Description of Technology: Lung disease is the number three killer in America, responsible for one in seven deaths, and lung disease and other breathing problems are the number one killer of babies younger than one year old. Today, more than thirty (30) million Americans are living with chronic inflammatory lung diseases such as emphysema and chronic bronchitis. In addition, approximately one hundred and fifty thousand (150,000) Americans are affected by acute respiratory distress syndrome (ARDS) each year.

Many lung diseases are associated with lung inflammation. For example, ARDS involves the rapid onset of

progressive malfunction of the lungs, and is usually associated with the malfunction of other organs due to the inability to take up oxygen. The condition is associated with extensive lung inflammation and small blood vessel injury in all affected organs. ARDS is commonly precipitated by trauma, sepsis (systemic infection), diffuse pneumonia, and shock. It also may be associated with extensive surgery, and certain blood abnormalities. In many cases of ARDS and other inflammatory lung diseases, the inflammatory response that accompanies the underlying disease state is much more dangerous than the underlying infection or trauma.

This application claims use of suppressive oligonucleotides to suppress lung inflammation. More specifically, the application claims use of suppressive oligonucleotides for the treatment, prevention, or inhibition of pneumonia, ARDS, and chronic bronchitis.

Applications: Vaccine adjuvants, production of vaccines, immunotherapeutics.

Development Status: Preclinical studies have been performed; oligonucleotides have been synthesized.

Inventors: Dennis Klinman (FDA/CBER; NCI) and Hiroshi Yamada (CBER/FDA).

Patent Status: U.S. Provisional Application No. 60/417,263 filed 08 Oct 2002 (HHS Reference Number E–183–2002/0–US–01); U.S. Patent Application No. 10/682,130 filed 07 Oct 2003 (HHS Reference Number E–183–2002/0–US–02).

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov*

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Experimental Immunology, Immune Modulation Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Use of Suppressive Oligonucleotides to Treat Uveitis

Description of Technology: Uveitis is a major cause of visual loss in industrialized nations. Uveitis refers to an intraocular inflammation of the uveal tract, namely, the iris, choroids, and ciliary body. Uveitis is responsible for about ten percent (10 %) of the legal blindness in the United States. Complications associated with uveitis include posterior synechia, cataracts, glaucoma and retinal edema.

Suppressive CpG oligodeoxynucleotides (ODNs) are ODNs capable of reducing an immune response, such as inflammation. Suppressive ODNs are DNA molecules of at least eight nucleotides in length, where the ODN forms a G-tetrad, and has a circular dichroism value greater than 2.9. In a suppressive ODN, the number of guanosines is at least two.

This application claims compositions and methods for the treatment of uveitis. Specifically, the application claims use of suppressive CpG ODNs to treat uveitis. The compositions and methods of the application can be used for the treatment of anterior, posterior and diffuse uveitis.

Application: Vaccine adjuvants, production of vaccines, immunotherapeutics.

Developmental Status: Preclinical studies have been performed; oligonucleotides have been synthesized.

Inventors: Dennis Klinman (FDA/CBER; NCI), Igal Gery (NEI), Chiaki Fujimoto (NEI).

Patent Status: U.S. Provisional Application No. 60/569,276 filed 06 May 2004 (HHS Reference No. E–152–2004/0–US–01); PCT Application No. PCT/US2005/015761 filed 05 May 2005, which published as WO 2005/11539 on 09 Dec 2006 (HHS Reference No. E–152–2004/0–PCT–02); U.S. Patent Application No. 11/579,518 filed 03 Nov 2006 (HHS Reference Number E–152–2004/0–US–03); International filings in Australia, Canada, China, Europe, India, Japan, Mexico.

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Experimental Immunology, Immune Modulation Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Use of CpG Oligodeoxynucleotides To Induce Epithelial Cell Growth

Description of Invention: Wound repair is the result of complex interactions and biologic processes. Three phases have been described in normal wound healing: Acute inflammatory phase, extracellular matrix and collagen synthesis, and remodeling. The process involves the interaction of keratinocytes, fibroblasts and inflammatory cells at the wound site. The sequence of the healing process is initiated during an acute inflammatory phase with the deposition of provisional tissue. This is followed by re-epithelialization, collagen synthesis and deposition, fibroblast proliferation, and neovascularization, all of which ultimately define the remodeling phase. These events are influenced by growth factors and cytokines secreted by inflammatory cells or by the cells localized at the edges of the wound.

Tissue regeneration is believed to be controlled by specific peptide factors which regulate the migration and proliferation of cells involved in the repair process. Thus, it has been proposed that growth factors will be useful therapeutics in the treatment of wounds, burns and other skin disorders. However, there still remains a need for additional methods to accelerate wound healing and tissue repair.

This application claims methods of increasing epithelial cell growth. The methods include administering a therapeutically effective amount of a CpG oligodeoxynucleotide (ODN) to induce epithelial cell division. Also claimed are methods of inducing wound healing. The method includes treating the wound with a CpG oligonucleotide, thereby inducing wound healing. The wound can be any type of wound, including trauma or surgical wounds. The CpG ODN can be applied systemically or locally.

Application: Induction of wound healing through use of CpG oligodeoxynucleotides.

Developmental Status: CpG oligonucleotides have been synthesized and preclinical studies have been performed.

Inventors: Dennis Klinman and Takahashi Sato (NCI).

Patent Status: U.S. Provisional Application No. 60/970,145 filed 05 Sep 2007 (HHS Reference No. E–242–2007/0–US–01).

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Experimental Immunology, Immune Modulation Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or

commercialize methods of increasing epithelial cell growth. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: October 20, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–25566 Filed 10–24–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye Institute Special Emphasis Panel; K08, K23, K99–NEI Research Training Applications.

Date: November 14, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel and Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, 301–451–2020, *rawlings@nei.nih.gov*.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Cooperative Agreement Review.

Date: November 20, 2008.

Time: 3 p.m. to 5:30 p.m.

Agenda: To review and evaluate cooperative agreement Applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Houmam H Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602, 301–451–2020, *ha50c@nih.gov*.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Core Grants for Vision Research Review.

Date: December 5, 2008.

Time: 8:30 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: Houmam H Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602, 301–451–2020, *ha50c@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–25357 Filed 10–24–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Resident Research RFA.

Date: December 8–9, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Raul A Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Nsc; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–25626 Filed 10–24–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the 17th meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8 a.m. to approximately 5:30 p.m. on Monday, December 1, 2008, and 8 a.m. to approximately 3 p.m. on Tuesday, December 2, 2008, at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

For most of the first day of the meeting, SACGHS will review a preliminary draft report that addresses questions about whether gene patents and certain licensing practices are affecting patient access to genetic tests. SACGHS will discuss the draft report and determine whether it is ready to be released for public comment. Later in the day, the Committee will hear presentations about diagnostic laboratory standards and technology platforms and the role they are playing in innovation of genetic technologies. On day two, the Committee will continue to discuss priority issues and future study topics and come to a final decision about its strategic study plan.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov*. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who is in need of special assistance, such as sign language interpretation or other

reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm.*

Dated: October 20, 2008.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. E8–25485 Filed 10–24–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2006–0073]

National Protection and Programs Directorate; Notice of Availability of Risk-Based Performance Standards Guidance for the Chemical Facility Anti-Terrorism Standards

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Homeland Security (DHS) is accepting comments on the draft ''Risk-Based Performance Standards'' Guidance associated with the Chemical Facility Anti-Terrorism Standards.

DATES: Comments must be received by November 26, 2008.

ADDRESSES: Comments must be identified by docket number DHS–2006–0073 and may be submitted by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Dennis Deziel, U.S. Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division, Mail Stop 8100, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Dennis Deziel, Office of Infrastructure Protection, Mail Stop 8100, Washington, DC 20528, telephone number (703) 235–5263.

SUPPLEMENTARY INFORMATION:

I. Public Participation

DHS invites interested persons to contribute suggestions and comments on the draft document entitled ''Risk-Based Performance Standards Guidance'' (RBPS Guidance) by submitting written data, views, or arguments. Comments that will provide the most assistance to DHS will explain the reason for any recommended changes to the RBPS Guidance and include data, information, or authority that supports such recommended changes. DHS requests that commenters identify the proposed changes by page and line number, and/or by Figure or Table number. The RBPS Guidance can be viewed or downloaded at *http://www.dhs.gov/chemicalsecurity* and *http://www.regulations.gov.*

Instructions: All submissions received must include the agency name and docket number for this action. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may submit your comments and material by one of the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions. If you submit comments by mail, your submission should be an unbound document and no larger than 8.5 by 11 inches to enable copying and electronic document management.

Docket: The RBPS Guidance and any comments received can be viewed at *http://www.regulations.gov* by searching the docket number referenced above.

II. Background

In Section 550 of the Homeland Security Appropriations Act of 2007 (Pub. L. 109–295) (Section 550), Congress gave DHS regulatory authority over security at high-risk chemical facilities. Section 550 instructed DHS to require all high-risk chemical facilities to complete Security Vulnerability Assessments (SVAs), develop Site Security Plans (SSPs), and implement protective measures necessary to meet DHS-defined risk-based performance standards.

Pursuant to its congressional mandate, DHS promulgated the Chemical Facility Anti-Terrorism Standards (CFATS), 6 CFR Part 27, the interim final regulations setting forth the requirements that high risk (i.e., ''covered'') chemical facilities must meet to comply with the Act. *See* 72 FR 17688 (Apr. 9, 2007). Among other things, CFATS establishes eighteen Risk-Based Performance Standards (RBPSs), which identify the areas for which DHS will examine a high-risk facility's security posture; they include perimeter security, access control, personnel surety, and cyber security.

To meet the RBPSs, covered facilities may choose whatever security programs or processes they deem appropriate, so long as DHS determines that those measures achieve the requisite level of performance in each applicable area. The programs and processes a high-risk facility ultimately chooses to implement to meet these standards must be described in the facility's SSP or, if the facility chooses, in an Alternative Security Program (ASP) that meets the requirements of Section 550 and CFATS. It is through a review of the SSP (or ASP), combined with an on-site inspection, that DHS will determine whether or not a high-risk facility has met the requisite levels of performance established by the RBPSs, given the facility's individual circumstances.

As required by 6 CFR 27.230(a), DHS has developed the RBPS Guidance to assist high-risk chemical facilities in selecting and implementing appropriate protective measures and practices to meet the applicable RBPSs. The draft RBPS Guidance describes the general level of performance that facilities in each of the risk-based tiers created by CFATS should strive to achieve under each RBPS. It also seeks to help facilities comply with CFATS by describing in greater detail the eighteen RBPSs enumerated in CFATS, and by providing examples of various security measures and practices that facilities could consider to achieve the desired level of performance for each RBPS at each tier.

The draft RBPS Guidance reflects DHS's current views on certain aspects of the RBPSs and does not have the force or effect of law. The specific security measures and practices discussed in this document are neither mandatory nor necessarily the ''preferred solution'' for complying with the RBPSs. Rather, they are examples of measures and practices that a high risk facility may choose to consider as part of its overall strategy to address the RBPSs. High-risk facility owners/operators have the option to choose and implement other measures to meet the RBPSs based on the facility's circumstances, including its tier level, security issues and risks, physical and operating environments, and other appropriate factors, so long as DHS determines that the suite of measures

implemented achieves the levels of performance established by the RBPSs.

DHS seeks comment on the draft RBPS Guidance document, which is available online at *http://www.dhs.gov/chemicalsecurity* and *http://www.regulations.gov.* Based on the comments received, DHS may make appropriate revisions to the RBPS Guidance. In that event, DHS will make available a revised RBPS Guidance at *http://www.dhs.gov/chemicalsecurity* and *http://www.regulations.gov.*

Robert B. Stephan,

Assistant Secretary for Infrastructure Protection, Department of Homeland Security.

[FR Doc. E8–25596 Filed 10–24–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–1036]

Information Collection Requests to Office of Management and Budget; OMB Control Numbers: 1625–0079 and 1625–0088

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) and Analyses to the Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0079, Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 and 1997 Amendments to the International Convention; and (2) 1625–0088, Voyage Planning for Tank Barge Transits in the Northeast United States. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 26, 2008.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2008–1036], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand deliver:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

Copies of the completed ICRs are available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–1036], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8–½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Enter the docket number [USCG–2008–1036] in the Search box, and click, ''Go>>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in 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 a Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Information Collection Requests

1. *Title:* Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 and 1997 Amendments to the International Convention.

OMB Control Number: 1625–0079.

Summary: This information is necessary to ensure compliance with the international requirements of the STCW Convention, and to maintain an acceptable level of quality in activities associated with training and assessment of merchant mariners.

Need: 46 U.S.C. chapter 71 authorizes the Coast Guard to issue regulations related to licensing of merchant mariners. These regulations are

contained in 46 CFR chapter I, subchapter B.

Forms: None.

Respondents: Owners and operators of vessels, training institutions, and mariners.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 23,767 hours to 17,928 hours per year.

2. *Title:* Voyage Planning for Tank Barge Transits in the Northeast United States.

OMB Control Number: 1625–0088.

Summary: The information collection requirement for a voyage plan serves as a preventive measure and assists in ensuring the successful execution and completion of a voyage in the First Coast Guard District. The regulation associated with this collection of information (33 CFR 165.100) applies to primary towing vessels engaged in towing certain tank barges carrying petroleum oil in bulk as cargo.

Need: Section 311 of the Coast Guard Authorization Act of 1998, Pub. L. 105–383, 33 U.S.C. 1231, and 46 U.S.C. 3719 authorize the Coast Guard to promulgate regulations for towing vessel and barge safety for the waters of the Northeast subject to the jurisdiction of the First Coast Guard District. This regulation is contained in 33 CFR 165.100. The information for a voyage plan will provide a mechanism for assisting vessels towing tank barges to identify those specific risks, potential equipment failures, or human errors that may lead to accidents.

Forms: None.

Respondents: Owners and operators of towing vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 31,651 hours to 2,692 hours per year.

Dated: October 20, 2008.

D. T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–25516 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act

AGENCIES: Department of the Interior, Office of the Assistant Secretary—Water and Science.

ACTION: Notice of Availability, Record of Decision (ROD) on the Lower Duchesne River Wetlands Mitigation Project Final Environmental Impact Statement (FEIS 08–13) documenting the Department of the Interior's decision to adopt the Proposed Action and approval to proceed with implementation.

SUMMARY: The Office of the Assistant Secretary of the Interior for Water and Science has signed the Record of Decision which documents the selection of the Proposed Action as presented in the Final Environmental Impact Statement (FEIS) for the Lower Duchesne River Wetlands Mitigation Project (LDWP), Duchesne and Uintah Counties, Utah, a mitigation component of the Central Utah Project (CUP). The FEIS was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA) and was filed with the Environmental Protection Agency on April 11, 2008. The ROD approves implementation of the project in accordance with statutory and contractual obligations.

The Proposed Action fulfills a Central Utah Project need to complete certain environmental mitigation obligations of the Federal government to the Ute Indian Tribe of the Uintah and Ouray Agency, Ft. Duchesne, Utah. These mitigation commitments derive from construction and operation of the Strawberry Aqueduct and Collection System (SACS) of the CUP. The SACS has diverted Ute Indian Tribal water away from the Duchesne River and, thereby, depleted water sources which historically supported wetlands, riparian habitats and associated fish and wildlife resources held in trust by the Federal government for the benefit of the Ute Indian Tribe. The LDWP will replace, restore and enhance these trust resources consistent with long-standing commitments and promises made by the Federal government to the Ute Indian Tribe.

The Department of the Interior and the Utah Reclamation Mitigation and Conservation Commission served as Joint Lead Agencies in compliance with NEPA. The Ute Indian Tribe, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Bureau of Reclamation, Duchesne County and Uintah County served as Cooperating Agencies. The FEIS and ROD satisfy disclosure requirements of NEPA and will serve as NEPA compliance documentation for all contracts, agreements and permits that will be required for construction and operation of the project.

FOR FURTHER INFORMATION CONTACT: For further information or to request copies of the FEIS, ROD or supporting resource technical reports contact Mr. Ralph G. Swanson at (801) 379–1254, or *rswanson@uc.usbr.gov.*

Reed R. Murray,

Program Director, Department of the Interior.

[FR Doc. E8–25625 Filed 10–24–08; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2008–N0149; 20131–1265–2LPP]

Texas Chenier Plain National Wildlife Refuge Complex, Chambers, Jefferson, and Galveston Counties, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the decision and availability of the record of decision (ROD) for the final environmental impact statement (EIS), comprehensive conservation plan (CCP), and land protection plan (LPP) for the Texas Chenier Plain National Wildlife Refuge Complex (Refuge Complex). We completed a thorough analysis of the environmental, social, and economic considerations and presented it in our final EIS, which we released to the public through a **Federal Register** notice on June 30, 2008. The ROD documents our decision to adopt and implement Refuge Management Alternative D and Refuge Boundary Expansion Alternative C. Refuge Management Alternative D is adopted as the CCP for the Refuge Complex and will direct the management activities on the Refuge Complex for the next 15 years. Refuge Boundary Expansion Alternative C is adopted as the LPP for the Refuge Complex and authorizes land acquisition from willing sellers within a designated 64,260-acre expansion area.

DATES: The Acting Regional Director, Region 2, U.S. Fish and Wildlife Service, signed the ROD on September 16, 2008.

ADDRESSES: You may view or obtain copies of the ROD by any of the following methods:

Agency Web Site: Download a copy of the document at *http://www.fws.gov/southwest/refuges/Plan/docs/LINKS.pdf.*

E-mail: doug_stpierre@fws.gov. Include ''TX Chenier Plain NWR Complex ROD'' in the subject line of the message.

Mail: Doug St. Pierre, Division of Planning, P.O. Box 1306, Albuquerque, NM 87103.

In-Person Viewing or Pickup: Call 409–267–3337 to make an appointment during regular business hours at Texas Chenier Plain NWR Complex Headquarters, 509 Washington Street, Anahuac, TX.

FOR FURTHER INFORMATION CONTACT: Doug St. Pierre, 505–248–6636.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP and LPP process for Moody, Anahuac, McFaddin, and Texas Point National Wildlife Refuges. We started this process in a **Federal Register** notice (64 FR 56800, October 21, 1999). We released the draft EIS/CCP/LPP to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (71 FR 61063; October 17, 2006). We announced the availability of the final EIS/CCP/LPP in the **Federal Register** (73 FR 36890) on June 30, 2008.

The Refuge Complex is located along the upper Texas Gulf Coast between Houston, Texas, and the Louisiana border. This coastal ecosystem includes important freshwater, estuarine marshes, tallgrass prairie with small depressional wetlands, and coastal woodlots. These habitats are an important part of the primary wintering area for Central Flyway ducks and geese, and, additionally, are critical staging areas for neotropical landbirds migrating to and from Central and South America.

In accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements, this notice announces our decision and the availability of the ROD for the final EIS/CCP/LPP for the Refuge Complex. We completed a thorough analysis of the environmental, social, and economic considerations, which we included in the final EIS/CCP/LPP. The ROD documents our selection of Refuge Management Alternative D, the Preferred Alternative, for the CCP; and, our selection of Refuge Boundary Alternative C, the Preferred Alternative, for the LPP.

The CCP will guide us in managing and administering Moody, Anahuac, McFaddin, and Texas Point National Wildlife Refuges for the next 15 years. Refuge Management Alternative D, as we described in the final EIS/CCP/LPP, is the foundation for the CCP. The LPP authorizes acquisition of land or interests in land from willing sellers within the expanded boundaries of Moody, Anahuac, McFaddin, and Texas Point National Wildlife Refuges. Refuge Boundary Expansion Alternative C, as we described in the final EIS/CCP/LPP, is the foundation for the LPP, which outlines the expanded boundaries and lists the tracts/ownerships within these boundaries.

Background

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

CCP/LPP Alternatives and the Two Selected Alternatives

Our draft EIS/CCP/LPP (71 FR 200) addressed several issues. To address these, we developed and evaluated the two following sets of alternatives:

Refuge Management Alternatives

Alternative A: (NEPA no action alternative) Continuation of current management.

Alternative B: Emphasis on intensifying management of wetland habitats for waterfowl, shorebirds, wading birds, and other wetland-dependent migratory birds.

Alternative C: Emphasis on native habitat restoration and addressing major threats to the ecosystem.

Alternative D: Emphasis on an integrated management approach combining (1) Expanded habitat management and restoration programs, (2) new research and wildlife population monitoring, and (3) increased efforts to address major threats to the ecosystem.

Alternative E: Emphasis on a passive management approach.

Refuge Boundary Expansion Alternatives

Alternative A: (NEPA no action alternative) No expansion, current status.

Alternative B: Total 33,590-acre expansion.

Alternative C: Total 64,260-acre expansion.

Alternative D: Total 104,120-acre expansion.

After considering the comments we received, we have selected Refuge Management Alternative D for the CCP. It documents our decision, based on the information contained in the final EIS and the entire administrative record. The Service believes that Refuge Management Alternative D (Preferred Alternative) represents the most desirable approach to meet the establishment purposes of the refuges in the Refuge Complex, the mission of the National Wildlife Refuge System, and the conservation of Trust fish and wildlife species including migratory birds and Threatened and Endangered species, while recognizing the need to address emerging threats to biological integrity, biological diversity, and ecosystem health. This alternative focuses on protecting and enhancing existing wetland and upland habitats on the Refuge Complex through active management, continues and expands efforts to enhance and restore native tallgrass coastal prairie and woodland habitat on suitable sites, continues and expands efforts to address major ecosystem threats, uses additional scientific monitoring and studies to guide an adaptive management approach with increased emphasis on declining or sensitive species, and expands wildlife-dependent recreational uses with an emphasis on enhancing the quality of the refuge visitor experience.

Also, after considering the comments we received, we have selected Refuge Boundary Expansion Alternative C for the LPP. It documents our decision, based on the information contained in the final EIS and the entire administrative record. In selecting its Refuge Boundary Expansion Alternative, the Service considered ecological values, benefits to management of existing refuges, levels of threat, and feasibility as affected by land ownership patterns and projected availability of funding. The newly approved refuge boundaries would contain the largest remaining tracts of native coastal prairie on the upper Texas coast, in addition to important areas of coastal marsh adjacent to existing refuges.

Public Availability of Documents

In addition to the methods in **ADDRESSES**, you can view or obtain documents at the following location:

• Our Web site: *http://www.fws.gov/southwest/refuges/Plan/docs/LINKS.pdf.*

Dated: October 20, 2008.

Brian Millsap,

Acting Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. E8–25496 Filed 10–24–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14907–A2, F–14907–B2, F–14930–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 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 Noatak and Selawik, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 16 N., R. 7 W.,
Secs. 18, 19, 30, and 31.
Containing approximately 2,347 acres.

T. 25 N., R. 20 W.,
Secs. 11 to 14, inclusive;
Secs. 23, 24, and 26.
Containing approximately 4,340 acres.

T. 27 N., R. 20 W.,
Secs. 11 to 14, inclusive.
Containing approximately 2,560 acres.
Aggregating approximately 9,247 acres.

The subsurface estate in these lands will also be conveyed to NANA Regional Corporation, Inc. when the surface estate is conveyed. 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 November 26, 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.

Michael Bilancione,

Land Transfer Resolution Specialist, Land Transfer Adjudication I.

[FR Doc. E8–25493 Filed 10–24–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14943–B; 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 Tanacross, Incorporated. The lands are in the vicinity of Tanacross, Alaska, and are located in:

Copper River Meridian, Alaska

T. 20 N., R. 11 E.,
Tract A, that portion more particularly described as (protracted)
Sec. 24.
Containing approximately 640 acres.

T. 20 N., R. 12 E.,
Tract A, those portions more particularly described as (protracted)
Secs. 3, 4, and 5;
Secs. 7 to 10, inclusive;
Secs. 17, 18, and 19;
Sec. 30.
Containing approximately 6,880 acres.
Aggregating approximately 7,520 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until November 26, 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.

Jason Robinson,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–25494 Filed 10–24–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–MRM–0033]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0087).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. We changed the title to meet OMB requirements. The previous title of this information collection request (ICR) was ''30 CFR part 227—Delegation to States; 30 CFR part 228—Cooperative Activities with States and Indian Tribes; and 30 CFR part 229—Delegation to States.'' The new title is ''30 CFR parts 227, 228, and 229, Delegated and Cooperative Activities with States and Indian Tribes.''

DATES: Submit written comments on or before *December 26, 2008.*

ADDRESSES: You may submit comments by the following methods:

• Electronically go to *http://www.regulations.gov.* In the ''Comment or Submission'' column, enter ''MMS–2008–MRM–0033'' to view supporting and related materials for this ICR. Click on ''Send a comment or submission'' link to submit public comments. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. All comments submitted will be posted to the docket.

• Mail comments to Armand Southall, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. Please reference ICR 1010–0087 in your comments.

• Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1010–0087 in your comments.

FOR FURTHER INFORMATION CONTACT: Armand Southall, telephone (303) 231–3221, or e-mail *armand.southall@mms.gov.* You may also contact Mr. Southall to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Parts 227, 228, and 229, Delegated and Cooperative Activities with States and Indian Tribes.

OMB Control Number: 1010–0087.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under the Mineral Leasing Act of 1920 (30 U.S.C. 1923), the Indian Mineral Development Act of 1982 (25 U.S.C. 2103), and the Outer Continental Shelf Lands Act (OCS Lands Act, 43 U.S.C. 1353), the Secretary is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties and other mineral revenues from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the mineral revenue management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are accurately valued and appropriately paid.

Sections 202 and 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended, authorize the Secretary to develop delegated and cooperative agreements with states and Indian tribes to carry out certain inspection, auditing, investigation, or limited enforcement activities for leases in their jurisdiction. The states and Indian tribes are working partners and are an integral part of the overall onshore and offshore compliance effort.

Public laws pertaining to mineral revenues are located on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

Relevant parts of the Code of Federal Regulations (CFR) include 30 CFR parts 227, 228, and 229, as described below:

Title 30 CFR Part 227—Delegation to States, provides procedures to delegate certain Federal minerals revenue management functions to states for Federal oil and gas leases. The regulation also provides only audit and investigation functions to states for geothermal and solid mineral leases, and leases subject to Section 8(g) of the OCS Lands Act, within their state boundaries.

Title 30 CFR Part 228—Cooperative Activities with States and Indian Tribes, provides procedures to utilize the capabilities of the Indian tribes to carry out audits and related investigations of their respective leased lands.

Title 30 CFR Part 229—Delegation to States, provides procedures to utilize the capabilities of the states to carry out audits and related investigations of leased Indian lands within their respective state boundaries, by permission of the respective Indian tribal councils or individual Indian mineral owners.

Effective September 11, 1997, parts 228 and 229 do not apply to Federal lands, due to implementation of RSFA amendments. The final rulemaking of Delegation of Royalty Management Functions to States was published on August 12, 1997 (62 FR 43076), effective September 11, 1997, and stated that parts 228 and 229 do not apply to Federal lands because delegation for Federal lands is now covered under part 227.

Delegation to States and Cooperative Activities With Indian Tribes

States

Under Section 205 of FOGRMA, as amended by RSFA Section 3, the Secretary is authorized to delegate to states, all or part of authorities and responsibilities of the Secretary, to conduct inspections, audits, investigations, and limited enforcement activities for leases in their jurisdiction.

Eleven states currently have MMS-approved delegation agreements to perform audits and investigations. The states perform nearly all audits on Federal leases within their boundaries and receive 50 percent of the revenues from those leases, although Alaska receives 90 percent of the revenues from Federal leases in that state.

To be considered for delegation under 30 CFR part 227, states must submit a written delegation proposal to, and receive approval from, the MMS Associate Director for Minerals Revenue Management (MRM). Delegation agreements benefit both MMS and states by ensuring that Federal royalty payments are in compliance with applicable laws, lease terms, and regulations.

The MRM is held accountable to certain measurements and standards and must file reports to outside entities. States choosing to participate in any delegable function are held to these same measurements and standards and, therefore, must provide data to document the work they are performing. This information, provided to MMS in the course of performing delegated agreements, is the focus of this information collection. States must comply with Generally Accepted Accounting Principles (GAAP) and MMS standards, as required under 30 CFR 227.200, and also with the *MMS Audit Procedures Manual,* as required under 30 CFR 227.301.

Indian Tribes

Under FOGRMA Section 202, Cooperative Agreements, as amended by RSFA Section 9, the Secretary is authorized to enter into cooperative agreements with any state or Indian tribe upon their written request; to share

oil or gas revenue management information; and to use the capabilities of states and Indian tribes to carry out inspection, auditing, investigation, or limited enforcement activities for tribal leases.

A state must receive written permission from the respective Indian tribes(s) or individual Indian mineral owner(s) to carry out the above functions.

Under 30 CFR part 228, no state has proposed to enter into a cooperative agreement to undertake activities on Indian lands within its boundaries.

To be considered for a cooperative agreement, Indian tribes must comply with the regulations at 30 CFR part 228. Indian tribes who want to perform royalty audits, in cooperation with MMS, must submit a written proposal to enter into a cooperative agreement, signed by the tribal chairman or other appropriate official, to the MMS Director. The request should outline the activities to be undertaken and present evidence that the Indian tribe(s) can meet the standards established by the Secretary for the activities to be conducted. Prior to beginning work, approval must be obtained from the MMS Director. Currently, seven Indian tribes have cooperative agreements to perform audits and investigations.

When an Indian tribe performs any of the cooperative activities under 30 CFR part 228, the Indian tribe also assumes the burden of providing various types of information to MMS. After the request is accepted and a cooperative agreement is in effect, Indian tribes must submit an annual work plan and budget, as well as quarterly reimbursement vouchers. They must follow GAAP and MMS standards. The cooperative agreements also require them to comply with the *MMS Audit Procedures Manual,* and Generally Accepted Government Auditing Standards (GAGAS).

Cooperative activities benefit both MMS and Indian tribes by ensuring that royalty payments from Indian leases are in compliance with applicable laws, lease terms, and regulations. Indian tribes currently manage audits for 91 percent of all tribal mineral royalties.

Under the Secretary's delegation of authority at 30 CFR part 229, a state may conduct audits and related investigations of oil and gas payments made to MMS regarding leased Indian lands within the state's boundaries. After the state receives approval of the Secretary's delegation of authority, it must submit annual audit work plans detailing its audits and related investigations, annual budgets, and quarterly reimbursement vouchers. The state must maintain books and records and provide a quarterly summary of costs following Department standards, as required under 30 CFR 229.109. In addition, under 30 CFR part 229, no state has proposed to undertake delegated functions on Indian lands within its boundaries.

Summary

This collection of information is necessary in order for states and Indian tribes to conduct audits and related investigations of oil, gas, coal, any other solid minerals, and geothermal royalty revenues from Federal and tribal leased lands.

The MMS protects proprietary information submitted under this collection. The MMS does not collect items of a sensitive nature. A response to engage in these programs is voluntary and required to obtain the benefit of entering into a cooperative agreement with the Secretary.

Frequency of Response: Varies based on the function performed.

Estimated Number and Description of Respondents: 11 states and 7 Indian tribes.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 6,178 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
Part 227—Delegation to States				
Delegation Proposals				
227.103; 107; 109; 110(a–b)(1); 110(c–d); 111(a–b); 805.	What must a State's delegation proposal contain? ..... If you want MMS to delegate royalty management functions to you, then you must submit a delegation proposal to the MMS Associate Director for Minerals Revenue Management. MMS will provide you with technical assistance and information to help you prepare your delegation proposal.	200	1	200
Delegation Process				
227.110(b)(2)	(b)(2) If you want to change the terms of your delegation agreement for the renewal period, you must submit a new delegation proposal under this part.	15	11	165
Existing Delegations				
Compensation				
227.112(d–e)	What compensation will a State receive to perform delegated functions?. You will receive compensation for your costs to perform each delegated function subject to the following conditions.	4	84	336

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	(d) At a minimum, you must provide vouchers detailing your expenditures quarterly during the fiscal year. However, you may agree to provide vouchers on a monthly basis in your delegation agreement.[a]			
	States' Responsibilities To Perform Delegated Functions			
227.200(a), (b), (c), and (d); 112(e).	What are a State's general responsibilities if it accepts a delegation?. For each delegated function you perform, you must: (a) * * * seek information or guidance from MMS regarding new, complex, or unique issues. (b)(1) * * * Provide complete disclosure of financial results of activities; (2) Maintain correct and accurate records of all mineral-related transactions and accounts; (3) Maintain effective controls and accountability; (4) Maintain a system of accounts. (5) Maintain adequate royalty and production information. (c) Assist MMS in meeting the requirements of the Government Performance and Results Act (GPRA). (d) Maintain all records you obtain or create under your delegated function, such as royalty reports, production reports, and other related information. * * * You must maintain such records for at least 7 years.	200	11	2,200
227.200(e); 801(a); 804	(e) Provide reports to MMS about your activities under your delegated functions * * * At a minimum, you must provide periodic statistical reports to MMS summarizing the activities you carried out.[b]	3	44	132
227.200(f); 401(e); 601(d)	(f) Assist MMS in maintaining adequate reference, royalty, and production databases.	1	250	250
227.200(g); 301(e)	(g) Develop annual work plans	60	11	660
227.200(h)	(h) Help MMS respond to requests for information from other Federal agencies, Congress, and the public.	8	10	80
227.400(a)(4) and (a)(6); 401(d); 501(c).	What functions may a State perform in processing production reports or royalty reports? Production reporters or royalty reporters provide production, sales, and royalty information on mineral production from leases that must be collected, analyzed, and corrected. (a) If you request delegation of either production report or royalty report processing functions, you must perform. (4) Timely transmitting production report or royalty report data to MMS and other affected Federal agencies. (6) Providing production data or royalty data to MMS and other affected Federal agencies.	1	250	250
227.400(c)	(c) You must provide MMS with a copy of any exceptions from reporting and payment requirements for marginal properties and any alternative royalty and payment requirements for unit agreements and communitization agreements you approve.	1	12	12
227.601(c)	What are a State's responsibilities if it performs automated verification?. To perform automated verification of production reports or royalty reports, you must. (c) Maintain all documentation and logging procedures.	8	11	88
	Performance Review			
Subtotal Burden for 30 CFR Part 227.			695	4,373
	Part 228—Cooperative Activities With States and Indian Tribes			
	Subpart C—Oil and Gas, Onshore			
228.100(a) and (b); 101(c); 107(b).	Entering into an agreement (a) * * * Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from * * * tribal chairman * * * to the Director of MMS.	200	1	200

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	(b) The request for an agreement shall be in a format prescribed by MMS and should include at a minimum the following information: (1) Type of eligible activities to be undertaken. (2) Proposed term of the agreement. (3) Evidence that * * * Indian tribe meets, or can meet by the time the agreement is in effect. (4) If the State is proposing to undertake activities on Indian lands located within the State, a resolution from the appropriate tribal council indicating their agreement to delegate to the State responsibilities under the terms of the cooperative agreement for activities to be conducted on tribal or allotted land.			
228.101(a)	Terms of agreement (a) Agreements entered into under this part shall be valid for a period of 3 years and shall be renewable * * * upon request of * * * Indian tribe.	15	7	105
228.101(d)	(d) * * * Indian tribe will be given 60 days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies.	80	1	80
228.103(a) and (b)	Maintenance of records (a) * * * Indian tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup materials. (b) * * * Indian tribe shall maintain all books and records.	120	7	840
228.105(a)(1) and (a)(2)	Funding of cooperative agreements (a)(1) The Department may, under the terms of the cooperative agreement, reimburse * * * Indian tribe up to 100 percent of the costs of eligible activities. Eligible activities will be agreed upon annually upon the submission and approval of a work plan and funding requirement. (2) A cooperative agreement may be entered into with * * * Indian tribe, upon request, without a requirement for reimbursement of costs by the Department.	60	7	420
228.105(c)	(c) * * * Indian tribe shall submit a voucher for reimbursement of eligible costs incurred within 30 days of the end of each calendar quarter. * * * Indian tribe must provide the Department a summary of costs incurred, for which * * * Indian tribe is seeking reimbursement, with the voucher.[c]	4	36	144
Subtotal Burden for 30 CFR Part 228.			59	1789
Part 229—Delegation to States				
Subpart C—Oil and Gas, Onshore				
Administration of Delegations				
229.100(a)(1) and (a)(2)	Authorities and responsibilities subject to delegation (a) All or part of the following authorities and responsibilities of the Secretary under the Act may be delegated to a State authority: (1) Conduct of audits related to oil and gas royalty payments made to the MMS which are attributable to leased * * * Indian lands within the State. Delegations with respect to any Indian lands require the written permission, subject to the review of the MMS, of the affected Indian tribe or allottee. (2) Conduct of investigation related to oil and gas royalty payments made to the MMS which are attributable to * * * Indian lands within the State. Delegation with respect to any Indian lands require the written permission, subject to the review of the MMS, of the affected Indian tribe or allottee. No investigation will be initiated without the specific approval of the MMS.	1	1	1
229.101(a) and (d)	Petition for delegation	1	1	1

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	(a) The governor or other authorized official of any State which contains * * * Indian oil and gas leases where the Indian tribe and allottees have given the State an affirmative indication of their desire for the State to undertake certain royalty management-related activities on their lands, may petition the Secretary to assume responsibilities to conduct audits and related investigations of royalty related matters affecting . . . Indian oil and gas leases within the State.			
	(d) In the event that the Secretary denies the petition, the Secretary must provide the State with the specific reasons for denial of the petition. The State will then have 60 days to either contest or correct specific deficiencies and to reapply for a delegation of authority.			
229.102(c)	Fact-finding and hearings	1	1	1
	(c) A State petitioning for a delegation of authority shall be given the opportunity to present testimony at a public hearing.			
229.103(c)	Duration of delegations; termination of delegations	1	1	1
	(c) A State may terminate a delegation of authority by giving a 120-day written notice of intent to terminate.			
229.105	Evidence of Indian agreement to delegation	1	1	1
	In the case of a State seeking a delegation of authority for Indian lands * * * the State petition to the Secretary must be supported by an appropriate resolution or resolutions of tribal councils joining the State in petitioning for delegation and evidence of the agreement of individual Indian allottees whose lands would be involved in a delegation. Such evidence shall specifically speak to having the State assume delegated responsibility for specific functions related to royalty management activities.			
229.106	Withdrawal of Indian lands from delegated authority	1	1	1
	If at any time an Indian tribe or an individual Indian allottee determines that it wishes to withdraw from the State delegation of authority in relation to its lands, it may do so by sending a petition of withdrawal to the State.			
229.109(a)	Reimbursement for costs incurred by a State under the delegation of authority.	1	1	1
	(a) The Department of the Interior (DOI) shall reimburse the State for 100 percent of the direct cost associated with the activities undertaken under the delegation of authority. The State shall maintain books and records in accordance with the standards established by the DOI and will provide the DOI, on a quarterly basis, a summary of costs incurred.			
229.109(b)	(b) The State shall submit a voucher for reimbursement of costs incurred within 30 days of the end of each calendar quarter.	1	1	1
	Delegation Requirements			
229.120	Obtaining regulatory and policy guidance	1	1	1
	All activities performed by a State under a delegation must be in full accord with all Federal laws, rules and regulations, and Secretarial and agency determinations and orders relating to the calculation, reporting, and payment of oil and gas royalties. In those cases when guidance or interpretations are necessary, the State will direct written requests for such guidance or interpretation to the appropriate MMS officials.			
229.121(a), (b), (c), and (d)	Recordkeeping requirements	1	1	1
	(a) The State shall maintain in a safe and secure manner all records, workpapers, reports, and correspondence gained or developed as a consequence of audit or investigative activities conducted under the delegation.			
	(b) The State must maintain in a confidential manner all data obtained from DOI sources or from payor or company sources under the delegation.			

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	(c) All records subject to the requirements of paragraph (a) must be maintained for a 6-year period measured from the end of the calendar year in which the records were created * * * Upon termination of a delegation, the State shall, within 90 days from the date of termination, assemble all records specified in subsection (a), complete all working paper files in accordance with § 229.124, and transfer such records to the MMS. (d) The State shall maintain complete cost records for the delegation in accordance with generally accepted accounting principles.			
229.122(a), (b), and (c)	Coordination of audit activities (a) Each State with a delegation of authority shall submit annually to the MMS an audit workplan specifically identifying leases, resources, companies, and payors scheduled for audit * * * A State may request changes to its workplan * * * at the end of each quarter of each fiscal year. All requested changes are subject to approval by the MMS and must be submitted in writing. (b) When a State plans to audit leases of a lessee or royalty payor for which there is an MMS or OIG resident audit team, all audit activities must be coordinated through the MMS or OIG resident supervisor. (c) The State shall consult with the MMS and/or OIG regarding resolution of any coordination problems encountered during the conduct of delegation activities.	1	1	1
229.123 (b)(3)(i)	Standards for audit activities (b)(3) Standards of reporting. (i) Written audit reports are to be submitted to the appropriate MMS officials at the end of each field examination.	1	1	1
229.124	Documentation standards Every audit performed by a State under a delegation of authority must meet certain documentation standards. In particular, detailed workpapers must be developed and maintained.	1	1	1
229.125(a) and (b)	Preparation and issuance of enforcement documents (a) Determinations of additional royalties due resulting from audit activities conducted under a delegation of authority must be formally communicated by the State, to the companies or other payors by an issue letter prior to any enforcement action. (b) After evaluating the company or payor's response to the issue letter, the State shall draft a demand letter which will be submitted with supporting workpaper files to the MMS for appropriate enforcement action. Any substantive revisions to the demand letter will be discussed with the State prior to issuance of the letter.	1	1	1
229.126(a) and (b)	Appeals (a) * * * The State regulatory authority shall, upon the request of the MMS, provide competent and knowledgeable staff for testimony, as well as any required documentation and analyses, in support of the lessor's position during the appeal process. (b) An affected State, upon the request of the MMS, shall provide expert witnesses from their audit staff for testimony as well as required documentation and analyses to support the Department's position during the litigation of court cases arising from denied appeals.	1	1	1
229.127	Reports from States The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation.	1	1	1
Subtotal Burden for 30 CFR Part 229.			16	16

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
Total Burden	.....	.....	770	6,178

[a] Note: 5 states × 12 monthly vouchers = 60 and 6 states × 4 quarterly vouchers = 24.
[b] Note: 4 quarterly reports × 11 states = 44.
[c] Note: 1 tribe × 12 monthly vouchers = 12 and 6 tribes × 4 quarterly vouchers = 24.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour cost'' burden associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: October 9, 2008.

Gregory J. Gould,

Associate Director for Minerals Revenue Management.

[FR Doc. E8–25582 Filed 10–24–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 11, 2008.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 12, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

DISTRICT OF COLUMBIA

District of Columbia

Engine House No. 10, (Firehouses in Washington DC MPS) 1341 Maryland Ave., NE., Washington, DC, 08001063

Nathaniel Parker Gage School, (Public School Buildings of Washington, DC MPS) 2035 2nd St., NW., Washington, DC, 08001064

HAWAII

Maui County

Ka'ahumanu Avenue—Naniloa Drive Overpass, Naniloa Dr. at Ka'ahumanu Ave., Wailuku, 08001065

KANSAS

Ellis County

St. Joseph's Church and Parochial School, 210 W. 13th and 217 W. 13th, Hays, 08001066

Reno County

Ranson Hotel, 4918 E. Main, Medora, 08001067

Riley County

First Congregational Church, 700 Poyntz Ave., Manhattan, 08001068

MARYLAND

Allegany County

Flock's Mill, Address Restricted, Cumberland, 08001071

Howard County

Round About Hills, 15505 Cattail Oaks, Glenwood, 08001072

Wheatland, 12570 Hall Shop Rd., Fulton, 08001073

Montgomery County

Carderock Springs Historic District, (Subdivisions by Edmund Bennett and Keyes, Lethbridge and Condon in Montgomery County, MD, 1956–1973, MPS) Roughly bounded by I–495, Cabin John Regional Park, Seven Locks Rd., Fenway Rd., and Persimmon Tree Ln., Bethesda, 08001074

MASSACHUSETTS

Hampden County

Prospect Hill School, 33 Montgomery St., Westfield, 08001069

Middlesex County

Dennison Manufacturing Co. Paper Box Factory, 175 Maple St., Marlborough, 08001070

MISSISSIPPI

Attala County

Kosciusko Historic District, Roughly bounded by the Illinois, N. Wells, S. Natchez, Galloway, Bobo, S. Huntington, Jefferson St., Highland Dr., Kosciusko, 08001084

NEW YORK

Chemung County

Pratt House, 413 Lake St., Elmira, 08001075

Erie County

Lancaster District School No. 6, 3703 Bowen Rd., Lancaster, 08001076

Ontario County

Dickson, John and Mary, House, 9010 Main St., West Bloomfield, 08001077

Ontario and Livingston Mutual Insurance Office, (Cobblestone Architecture of New York State MPS) 9018 Main St., West Bloomfield, 08001078

Orleans County

Shelp, John, Cobblestone House, (Cobblestone Architecture of New York State MPS) 10181 West Shelby Rd., Middleport, 08001079

Putnam County

Grove, The, 12 Grove Ct., Cold Spring, 08001080

Seneca County

Ritter, Simon, Cobblestone Farmhouse, (Cobblestone Architecture of New York State MPS) 5102 NY Rt. 89, Varick, 08001081

Warren County

FORWARD shipwreck site (motor launch), Address Restricted, Lake George, 08001082

Westchester County

Proctor's Theater, 53 S. Broadway, Yonkers, 08001083

TENNESSEE

Davidson County

Glen Leven, (Historic Family Farms in Middle Tennessee MPS) 4000 Franklin Rd., Oak Hill, 08001085

Home for Aged Masons, Ben Allen Ln. and R.S. Glass Blvd., Nashville, 08001086

Request for REMOVAL has been made for the following resources:

TENNESSEE

Jefferson County

Newman, Samuel Isaac, House, Bible Rd., Jefferson City, 80003838

Lawrence County

Garner Mill, Garner Ln., Lawrenceburg, 84003575

Sevier County

Cole, Alex, Cabin 5 mi. S of Gatlingburg off U.S. 441 in Great Smoky Mountains National Park, Gatlinburg, 76000165

Request for MOVE has been made for the following resources:

KANSAS

Norton County

Sand Creek Truss Leg Beadstead Bridge, Larrick Park, Lenora, 03000365

[FR Doc. E8–25479 Filed 10–24–08; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–639]

In the Matter of Certain Spa Cover Lift Frames; Notice of a Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation and Terminating a Respondent on the Basis of a Consent Order Stipulation and Consent Order; Issuance of Consent Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') in the above-captioned investigation amending the complaint and notice of investigation and terminating a respondent on the basis of a consent order stipulation and consent order. The Commission has also determined to issue the subject consent order. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 24, 2008, based on a complaint filed by Leisure Concepts, Inc. (''Leisure Concepts'') of Spokane, Washington. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain spa cover lift frames that infringe the claims of U.S. Patent No. 5,996,137. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainant requested that the Commission issue an exclusion order and cease and desist orders barring future importation and sale of the accused products. The Commission named the following companies as respondents: Pool Mart, Inc. of Depew, New York; Islander Pool and Spas, Inc. of Albany, New York; Glaser Enterprises, Inc. of Virginia Beach, Virginia; ACE Swim Service of Chili, Inc. of Rochester, New York; Sparco, Ltd. a/k/a Sparco Buying Group of Albany, New York; and Kokido, Ltd. of Kowloon, Hong Kong. The ALJ set June 24, 2009, as the target date for completion of the investigation. The investigation has previously been terminated as to all respondents except Kokido, Ltd.

On May 19, 2008, Kokido Trading, Ltd. filed a motion seeking to terminate the investigation as to itself based upon a consent order stipulation and proposed consent order. Complainant opposed the motion; the Commission

investigative attorney supported the motion.

The ALJ issued the subject ID (Order No. 8) on September 26, 2008, amending the complaint and notice of investigation to name Kokido Trading, Ltd. as the proper respondent rather than Kokido, Ltd. The ID also terminated the investigation with respect to Kokido Trading, Ltd. on the basis of a consent order stipulation and proposed consent order. No petitions for review of the ID were filed. The Commission has determined not to review the ID and to issue the proposed consent order. Since Kokido Trading, Ltd. is the last respondent, the investigation is terminated in its entirety.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rules 210.21, 210.42, 19 CFR 210.21, 210.42.

Dated: Issued: October 22, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–25543 Filed 10–24–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–029]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 30, 2008 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none
2. Minutes
3. Ratification List
4. Inv. Nos. 701–451 and 731–TA–1126–1127 (Final)(Certain Lightweight Thermal Paper from China and Germany)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before November 10, 2008.)
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 21, 2008.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–25431 Filed 10–24–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–306F]

Final Revised Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2008

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Final Assessment of Annual Needs for 2008.

SUMMARY: This notice establishes the Final Revised 2008 Assessment of Annual Needs for certain List I chemicals in accordance with the Combat Methamphetamine Epidemic Act of 2005 (CMEA), enacted on March 9, 2006.

DATES: *Effective Date:* October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration (DEA), Springfield, Virginia 22152, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 713 of the Combat Methamphetamine Epidemic Act of 2005 (Title VII of Pub. L. 109–177) (CMEA) amended Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) by adding ephedrine, pseudoephedrine, and phenylpropanolamine to existing language to read as follows: ''The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.'' Further, 715 of CMEA amended21 U.S.C. 952 ''Importation of controlled substances'' by adding the same List I chemicals to the existing language in paragraph (a), and by adding a new paragraph (d) to read as follows:

(a) Controlled substances in schedule I or II and narcotic drugs in schedule III, IV, or V; exceptions:

It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of subchapter I of this chapter, or ephedrine, pseudoephedrine, and phenylpropanolamine, except that—

(1) such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves, and of ephedrine, pseudoephedrine, and phenylpropanolamine, as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes, and * * *

(d)(1) With respect to a registrant under section 958 who is authorized under subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine, at any time during the year the registrant may apply for an increase in the amount of such chemical that the registrant is authorized to import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

Editor's Note: This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 952(a) and (d)(1).

The 2008 Assessment of Annual Needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and/or imported into the United States in 2008 to provide adequate supplies of each chemical for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

On June 23, 2008, a notice entitled, ''Proposed Revised Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2008'' was published in the **Federal Register** (73 FR 35410). This notice proposed the revised 2008 Assessment of Annual Needs for ephedrine (for sale), ephedrine (for conversion), pseudoephedrine (for sale), phenylpropanolamine (for sale) and phenylpropanolamine (for conversion). All interested persons were invited to comment on or object to the proposed assessments on or before July 23, 2008.

DEA did not receive any comments or objections to the proposed revised Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2008. Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28

CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby orders that the Revised 2008 Assessment of Annual Needs for ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in kilograms of anhydrous acid or base, be established as follows:

List I chemical	Final 2008 assessment of annual needs (kg)
Ephedrine (for sale)	11,500
Ephedrine (for conversion)	128,760
Pseudoephedrine (for sale)	511,100
Phenylpropanolamine (for sale)	5,545
Phenylpropanolamine (for conversion)	85,470

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this action will not have a significant economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601–612. The establishment of the assessment of annual needs for ephedrine, pseudoephedrine and phenylpropanolamine is mandated by law. The assessments are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for lawful export requirements, and the establishment and maintenance of reserve stocks. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Executive Order 12866

The Office of Management and Budget has determined that notices of assessment of annual needs are not subject to centralized review under Executive Order 12866.

Executive Order 13132

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This action will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: October 7, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–25452 Filed 10–24–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,760]

Delphi Corporation, Electronics and Safety Division, Including On-Site Leased Workers From Acro Service Corporation, Kokomo, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 14, 2008, applicable to workers of Delphi Corporation, Electronics and Safety Division, Kokomo, Indiana. The notice was published in the **Federal Register** on February 29, 2008 (73 FR 11152).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of various types of automobile components, including: Heating, ventilating, air-conditioning systems (HVAC), amplifiers, mainboards, gas control modules, hybrid airmeter electronics, hybrid ignition electronics, pressure sensors, transmission control modules, crash sensing devices, occupant sensing devices, warning systems and semiconductors.

New information shows that leased workers of Acro Service Corporation were employed on-site at the Kokomo, Indiana location of Delphi Corporation, Electronics and Safety Division. The Department has determined that these workers are sufficiently under the control of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Acro Service Corporation working on-site at the Kokomo, Indiana location of the subject firm.

The intent of the Department's certification is to include all workers employed at Delphi Corporation, Electronics and Safety Division who were adversely affected by a shift in production Mexico.

The amended notice applicable to TA-W–62,760 is hereby issued as follows:

All workers of Delphi Corporation, Electronics and Safety Division, including on-site leased workers from Acro Service Corporation, Kokomo, Indiana, who became totally or partially separated from employment on or after January 28, 2007, through February 14, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–25460 Filed 10–24–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,830]

Robert Bosch Tool Corporation, Including On-Site Leased Workers From Bartlett Business Services and Salem Tools, Lincolnton, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and

Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 20, 2008, applicable to workers of Robert Bosch Tool Corporation, including on-site leased workers of Bartlett Business Services, Lincolnton, North Carolina. The notice was published in the **Federal Register** on September 3, 2008 (73 FR 51529).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of hand tools.

New information shows that leased workers of Salem Tools were employed on-site at the Cleveland, Ohio location of Robert Bosch Tool Corporation. The Department has determined that this worker was sufficiently under the control of the subject firm.

Based on these findings, the Department is amending this certification to include a leased worker of Salem Tools working on-site at the Lincolnton, North Carolina location of the subject firm.

The intent of the Department's certification is to include all workers employed at Robert Bosch Tool Corporation who were adversely affected by increased imports following a shift in production of hand tools to China.

The amended notice applicable to TA–W–63,830 is hereby issued as follows:

All workers of Robert Bosch Tool Corporation including on-site leased workers from Bartlett Business Services and Salem Tools, Lincolnton, North Carolina, who became totally or partially separated from employment on or after August 5, 2007, through August 20, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 15th day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–25464 Filed 10–24–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,742]

FCI USA, Inc., Including On-Site Leased Workers From Accountemps, Novi, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 12, 2008, applicable to workers of FCI USA, Inc., Novi, Michigan. The notice was published in the **Federal Register** on August 29, 2008 (73 FR 51004).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers supported production of electrical connectors that is produced at the Westland, Michigan location of the subject firm. The Westland, Michigan location was certified on June 11, 2007 (TA–W–61,612).

New information shows that leased workers of Accountemps were employed on-site at the Novi, Michigan location of FCI USA, Inc. Information also shows that the impact date was incorrectly stated as June 21, 2007 and should read July 21, 2007, one year back from the July 21, 2008 petition date.

The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Accountemps working on-site at the Novi, Michigan location of the subject firm and to correct the impact date to read July 21, 2007.

The intent of the Department's certification is to include all workers employed at FCI USA, Inc. who were adversely affected by a shift in production of electrical connectors to Mexico.

The amended notice applicable to TA–W–63,742 is hereby issued as follows:

All workers of FCI USA, Inc., including on-site leased workers from Accountemps, Novi, Michigan, who became totally or partially separated from employment on or after July 21, 2007, through August 12, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 15th day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–25462 Filed 10–24–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration [SGA/DFA–PY–08–08]

Solicitation for Grant Applications (SGA)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: Amendment to SGA/DFA–PY–08–08.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on October 3, 2008, announcing the availability of funds and solicitation for grant applications (SGA) to fund Demonstration Projects. This notice is an amendment to the SGA and it amends the ''Eligibility Information'' and ''Applications Review Process'' sections.

FOR FURTHER INFORMATION CONTACT: B. Jai Johnson, Grant Officer, Division of Federal Assistance, at (202) 693–3296.

Supplementary Information Correction: In the **Federal Register** of October 3, in FR Doc. E8–23319. On page 57674, under the heading, ''Part III. Eligibility Information'' is amended to read ''Eligible applicants include (in addition to those already established in the SGA) Workforce Investment Boards (WIB); and Federally Recognized Indian Tribes in partnership with Workforce Investment Boards. On page 57676, under the heading, ''Part V. Applications Review Process'' on page 57678 is amended to read under Criterion 5. Linkages to Key Partners (up to 15 Points), ''The applicant must demonstrate that the proposed project will be implemented by an already existing strategic partnership.''

Effective Date: This notice is effective October 27, 2008.

Signed at Washington, DC, this 21st of October 2008.

James W. Stockton,

Grant Officer.

[FR Doc. E8–25475 Filed 10–24–08; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of October 6 through October 10, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–63,894; Unicord International, LLC, dba Columbian Rope Company, Guntown, MS: August 11, 2007.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–64,053; Oakley Sub Assembly, Shreveport, LA: September 12, 2007.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,757; Continental Sprayers International, Inc., A Subsidiary of Continental AFA Dispensing Co., Bridgeport, CT: July 28, 2007.

TA–W–63,935; Koret of California, A Subsidiary of Kellwood Co., Oakland, CA: August 18, 2007.

TA–W–63,965; General Motors Corporation, GMVM Division, Allegis Group Services, Oklahoma City, OK: November 1, 2008.

TA–W–64,064; Bumper Works, Subsidiary of Flex-N-Gate, Trillium, Danville, IL: September 15, 2007.

TA–W–63,780; Newell Rubbermaid, Sanford Brands Division, Maryville, TN: July 30, 2007.

TA–W–63,899; Hughes Hardwood International, Inc., Dimension Plant, Collinwood, TN: August 18, 2007.

TA–W–63,954; Flextronics, Formerly Known as Solectron, Technology Leadership Group, Charlotte, NC: August 27, 2007.

TA–W–63,984; Norwalk Furniture Corporation, Livingston Division, Livingston, TN: September 3, 2007.

TA–W–64,015; KAM Manufacturing, Inc., Van Wert, OH: September 9, 2007.

TA–W–64,104; Joseph Abboud Mfg. Corp, New Bedford, MA: September 22, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,946; Rayloc, A Division of Genuine Parts Company, Morganfield, KY: August 14, 2007.

TA–W–63,947; Rayloc, A Division of Genuine Parts Company, Payson, UT: August 14, 2007.

TA–W–63,950; Howmet Corporation, Whitehall, MI: August 27, 2007.

TA–W–63,975; Hubbell Power Systems, Inc., Hubbell, Inc., Anderson Div., Staffmark, Elkton,TN: August 21, 2007.

TA–W–64,006; Amphenol Corporation, Sidney, NY: August 28, 2007.

TA–W–64,057; Alba Health, LLC, Rockwood, TN: March 17, 2008

TA–W–64,077; Trelleborg YSH, Inc., A Subsidiary of Trelleborg AB, Peru, IN: September 17, 2007.

TA–W–64,079; SKF Automotive Division, A Subsidiary of SKF USA, Inc., Glasgow, KY: September 18, 2007.

TA–W–64,092; Standard Motor Products,Wire and Cable Division, Edwardsville, KS: September 19, 2007.

TA–W–64,111; Drivesol Worldwide, Inc., Kendallville, IN: September 23, 2007.

TA–W–64,155; Window Fashions, Inc., Pittsburgh, PA: October 1, 2007.

TA–W–63,955; Southco, Inc., Randstad, Concordville, PA: August 27, 2007.

TA–W–64,032; Schawk, Inc., Cincinnati 447 Division, Imaging Department, Cincinnati, OH: September 8, 2007.

TA–W–64,065; Aeiomed, Inc., Minneapolis, MN: September 16, 2007.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,876; KMC Industries,Dell Technical Group, Landmark Staffing, U.S. Tech, Denmark, WI: August 12, 2007.

TA–W–64,043; Innertech-Shreveport: Decoma International, Division of Magna International, Shreveport, LA: September 12, 2007.

TA–W–64,059; Johnson Controls, Inc., dba Hoover Universal, Shreveport, LA: August 29, 2007.

TA–W–64,109; Greystone of Lincoln, Inc., A Subsidiary of Greystone,Lincoln, RI: August 29, 2007.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–63,894; Unicord International, LLC, dba Columbian Rope Company, Guntown, MS.

TA–W–64,053; Oakley Sub Assembly, Shreveport, LA.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,948; Kulp Foundry, Inc., East Stroudsburg, PA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,701; CTS & I Millwork, Rocky Mountain, VA.

TA–W–63,904; Nestaway, LLC, Garfield Heights, OH.

TA–W–63,992; Owens-Corning Sales LLC, OCV Reinforcements Division, Anderson, SC.

TA–W–64,036; Hamilton Dental Designs, Inc., Modesto, CA.

TA–W–64,160; Boise Cascade, LLC, St. Helens, OR.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–63,934; SMI Global Corporation, Pacific Plywood Holdings Limited, Bellevue, WA.

TA–W–63,998; Jabil Global Service, Failure Analysis Department, St. Petersburg, FL.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of October 6 through October 10, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 17, 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–25465 Filed 10–24–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,702]

Intermec Service Center, a Subsidiary of Intermec Technologies Corporation, Cedar Rapids, IA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated September 5, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on August 6, 2008 and published in the **Federal Register** on August 21, 2008 (73 FR 49492).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of Intermec Service Center, a subsidiary of Intermec Technologies Corporation, Cedar Rapids, Iowa was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner states that the workers of the subject firm are ''repair technicians, shipping/receiving clerks, stockroom clerks, warehouse clerks, administrative persons, and service center management.'' The petitioner further states that workers of the subject firm were engaged in distribution of ''new Articles sold to customers.''

The investigation revealed that workers of Intermec Service Center, a subsidiary of Intermec Technologies Corporation, Cedar Rapids, Iowa perform maintenance and repair on damaged or defective handheld computers, printers, and other items. Based on petitioner's allegations, the workers of the subject firm might also perform warehousing and distribution services. These functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 16th day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–25461 Filed 10–24–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,140]

Wellman, Inc.; Johnsonville, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 30, 2008 in response to a petition filed by a company official on behalf of workers of Wellman, Inc., Johnsonville, South Carolina.

The workers of Wellman, Inc., Johnsonville, South Carolina are covered by an active certification, (TA–W–60,395) which expires on December 4, 2008. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–25459 Filed 10–24–08; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials: Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of additional materials.

SUMMARY: This notice announces the opening of additional Nixon Presidential Historical Materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access approximately 198 hours of Nixon White House tape recordings and integral file segments among the Nixon Presidential historical materials.

DATES: The National Archives and Records Administration (NARA) intends to make the materials described in this notice available to the public on Tuesday, December 2, 2008 beginning at 12 p.m. (EST)/9 a.m. (PST). In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense before November 26, 2008.

ADDRESSES: The White House Communications Agency Sound Recording and the textual materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland with the exception of the Bryce Harlow Files which will be made available to the public at the Richard Nixon Presidential Library and Museum, 18001 Yorba Linda Blvd., Yorba Linda, CA 92886. The Nixon White House tapes will be available at both locations and on the Internet at *http://www.nixonlibrary.gov.* Researchers at either facility must have a NARA researcher card which they may obtain when they arrive at the facility.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Timothy Naftali, Director, Richard Nixon Presidential Library and Museum, 714–983–9121 or 301–837–3117.

SUPPLEMENTARY INFORMATION: The following materials will be made available in accordance with this notice:

1. NARA is proposing to open approximately 1,398 conversations which were recorded at the Nixon White House from November 1972 to December 1972. These conversations total approximately 198 hours of listening time. This is the twelfth opening of Nixon White House tapes since 1980. There are no transcripts for these tapes. Tape subject logs, prepared by NARA, are offered for public access

as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each conversation. Each tape log entry includes the names of participants; date and inclusive times of each conversation; location of the conversation; and an outline of the content of the conversation. Listening stations will be available for public use on a first come, first served basis. NARA reserves the right to limit listening time in response to heavy demand.

2. Previously restricted materials. Volume: 2 cubic feet. A number of materials which were previously withheld from public access have been reviewed for release and/or declassified under the mandatory review provisions of Executive Order 12958, as amended, or in accordance with 36 CFR 1275.56 (Public Access regulations). The materials are from file segments for the White House Special Files, Staff Member and Office Files; the National Security Files; and the White House Communications Agency Sound Recording Collection.

3. White House Central Files, Staff Member and Office Files. Volume: 30 cubic feet. The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. The Staff Member and Office Files consist of materials that were transferred to the Central Files but were not incorporated into the Subject Files. Two file groups will be made available: J. Fred Buzhardt Files and Bryce Harlow Files.

4. White House Central Files, Name Files: Volume: < 1 cubic foot. The Name Files were used for routine materials filed alphabetically by the name of the correspondent; copies of documents in the Name Files are usually filed by subject in the Subject Files. The Name File relating to Jack Anderson will be made available with this opening.

Dated: October 21, 2008.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E8–25572 Filed 10–24–08; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before November 26, 2008. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Homeland Security, Office of Policy (N1–563–08–16, 2 items, 2 temporary items). Applications of individuals not selected for open positions on Federal Advisory Committee Act committees. Applications of individuals who are selected are scheduled as permanent under General Records Schedule 26.

2. Department of Homeland Security, Office of Security (N1–563–08–9, 3 items, 3 temporary items). Records associated with background security checks of contractors and blueprints, floor plans, and drawings of agency headquarters facilities.

3. Department of Homeland Security, Transportation Security Administration (N1–560–08–3, 8 items, 7 temporary items). Master files for Secure Flight, an electronic information system used to conduct pre-flight checks of passengers and non-traveling individuals involved in passenger aviation for the purpose of detecting individuals who may pose a terrorist threat. Proposed for permanent retention are planning and implementation files documenting the creation of the Secure Flight program and its major policy decisions.

4. Department of Homeland Security, U.S. Coast Guard (N1–26–08–3, 3 items, 3 temporary items). Records created by the Navigation Center when the Long Range Navigation (LORAN) signal is unusable.

5. Department of Housing and Urban Development, Office of Single Family Housing (N1–207–08–3, 20 items, 17 temporary items). Data marts and outputs of an electronic data warehouse which contains information about single family home mortgage insurance cases. Consolidated single family home mortgage insurance case-level data is proposed for permanent retention. The proposed disposition instructions are limited to electronic records for the consolidated case-level data.

6. Department of the Interior, National Park Service (N1–79–08–7, 6 items, 2 temporary items). Records relating to National Assistance programs and technical and financial assistance functions, excluding records relating to National Park Service-managed structures or areas. Proposed for permanent retention are records relating to significant policies and procedures, grants, reporting of human remains and funerary objects by Federal agencies and museums, and case files on historic structures.

7. Department of Justice, Justice Management Division (N1–60–07–6, 2 items, 2 temporary items). Attorney Student Loan Repayment Program case files.

8. Department of Justice, Federal Bureau of Investigation (N1–65–07–16, 6 items, 6 temporary items). Applicant case files and related records for successful and unsuccessful applicants for employment, including an electronic information system containing information concerning applicants.

9. Department of Labor, Occupational Safety and Health Administration (N1–100–08–2, 3 items, 3 temporary items). Records relating to programs of the Office of Federal Agency Programs, Field Federal Safety and Health Councils (FFSHC), including files maintained by the FFSHC National Office and Regional Offices. Records consist of annual reports, charter requests, administrative files, and related records.

10. Department of the Navy, Agency-wide (N1–NU–08–5, 4 items, 4 temporary items). Routine military police and investigative records, including such files as field interview records, registration and permit records, and records relating to traffic violations and citations.

11. Department of the Navy, U.S. Marine Corps (N1–127–08–6, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to issue duty orders, change of station orders, and similar orders to Marine Corps reserve personnel.

12. Department of State, Bureau of Overseas Buildings Operations (N1–59–08–16, 12 items, 10 temporary items). Records of the Office of Real Estate, including master files of an electronic information system used to manage real estate assets and files relating to overseas properties leased by the U.S. Proposed for permanent retention are historically significant long term lease files and title deed files.

13. Department of State, Bureau of Overseas Buildings Operations (N1–59–09–2, 14 items, 13 temporary items). Records of the Office of Operations, including the master files of electronic systems related to overseas property management, logs, registers and other correspondence trackers, inspection reports, and general files documenting the condition and management of posts. Proposed for permanent retention are publications documenting the Art in Embassies program. The proposed disposition instructions for publications are limited to paper records.

14. Department of State, Office of the Legal Adviser (N1–59–08–13, 13 items, 12 temporary items). Records of the Legal Adviser for Ethics and Employment Law, including personnel grievance, complaint, and arbitration case files, and ethics and public disclosure subject and case files. Proposed for permanent retention are employment law subject files. The proposed disposition instructions are limited to paper records for the employment law subject files.

15. Department of Transportation, Federal Highway Administration (N1–406–08–9, 10 items, 8 temporary items). Records of the Office of Public Affairs, including administrative files, drafts, briefing materials, correspondence, research files, and working papers. Proposed for permanent retention are press releases and speeches.

16. Department of the Treasury, Departmental Offices (N1–56–08–4, 1 item, 1 temporary item). Master file for an electronic system used to expedite the allocation of resources and submission of invoices for joint operations funded by the Treasury Forfeiture Fund.

17. Department of the Treasury, Internal Revenue Service (N1–58–08–15, 2 items, 2 temporary items). Master file and outputs for the Midwest Automated Compliance System, which is used to retrieve and sort tax return data to identify compliance issues.

18. Environmental Protection Agency, Regions (N1–412–08–13, 2 items, 2 temporary items). Records accumulated in developing transportation control plans and transportation conformity determinations.

19. Environmental Protection Agency, Office of Environmental Information (N1–412–07–24, 2 items, 2 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to records regardless of the recordkeeping medium. Included are records accumulated in connection with information collection requests and reports submitted to the Office of Management and Budget and the Congress. Paper versions of these records were previously approved for disposal.

20. National Archives and Records Administration, Office of Records Services—Washington, DC (N1–64–08–9, 3 items, 3 temporary items). Records associated with the Reservation Scheduling System used by staff in the Center for the National Archives Experience. Included are reservations for tours data, transmittals and confirmation letters, and reports.

21. National Archives and Records Administration, Office of Administration (N1–64–08–13, 1 item, 1 temporary item). Credit card files consisting of applications, account maintenance records, periodic reviews, and related information.

22. Nuclear Regulatory Commission, Agency-wide (N1–431–08–14, 2 items, 2 temporary items). Master files and outputs of electronic information systems that maintain information on incidents and the status of licensed plants for use by agency inspectors.

Dated: October 21, 2008.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E8–25571 Filed 10–24–08; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–266]

FPL Energy Point Beach LLC; Notice of Issuance of Amendment to Facility Operating License; and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 234 to Renewed Facility Operating License No. DPR–24 issued to FPL Energy Point Beach, LLC (the licensee), which revised the Technical Specifications and License for operation of the Point Beach Nuclear Plant Unit 1 (the facility) located in the Town of Two Creeks, Manitowoc County, Wisconsin. The amendment was effective as of the date of its issuance.

The amendment made a one cycle revision to the Point Beach Nuclear Plant (PBNP) Unit 1 technical specifications (TS). Specifically, TS 5.5.8, ''Steam Generator (SG) Program,'' and TS 5.6.8, ''Steam Generator Tube Inspection Report,'' was revised to incorporate an interim alternate repair criterion into the provisions for SG tube repair for use during the Unit 1 2008 fall refueling outage and the subsequent operating cycle.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 5, 2008 (73 FR 45481). A request for a hearing was filed on August 20, 2008 by Thomas Saporito.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

The Commission has determined that this amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

For further details with respect to this action, see the application for amendment dated May 28, 2008, as supplemented by letter dated July 18, 2008, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 24th day of September 2008.

For the Nuclear Regulatory Commission.

Jack Cushing,

Senior Project Manager, Plant Licensing Branch 3–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–25542 Filed 10–24–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on November 6–8, 2008, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 22, 2007 (72 FR 59574).

Thursday, November 6, 2008, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Chapter 14 of the SER Associated with the Economic Simplified Boiling Water Reactor (ESBWR) Design Certification Application (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff and General Electric-Hitachi Nuclear Energy (GEH) regarding Chapter 14, ''Vertification Programs,'' of the NRC staff's SER With Open Items associated with the ESBWR design certification application.

Note: A portion of this session may be closed to protect information that is proprietary to GEH or its contractors pursuant to 5 U.S.C. 552b(c)(4).

10:15 a.m.–12 p.m.: Position Paper on Incorporating the International Commission on Radiological Protection (ICRP) Recommendations into 10 CFR Parts 20 and 50 (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding their plans to develop options to revise NRC regulations and guidance in light of the new recommendations of the ICRP.

1 p.m.–2:30 p.m.: Status of License Renewal Activities (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the status of the license renewal activities, Interim Staff Guidance, and implementation of the recommendations from the self-assessment.

2:45 p.m.–3:15 p.m.: Subcommittee Reports (Open)—The Committee will hear reports by the Chairman of the US–Advanced Pressurized Water Reactor (US–APWR) Subcommittee regarding Topical Reports associated with the US–

APWR design, and the Chairman of the Plant license renewal Subcommittee regarding the license renewal application for the Vogtle Plant.

3:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Friday, November 7, 2008, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Current Issues Associated with Fire Protection and Related Matters (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding current fire protection issues, such as, the fire protection issues closure plan, Commission direction to the staff on fire protection issues, GAO recommendations and planned staff actions, and draft Regulatory Guides for implementing National Fire Protection Association (NFPA)—805 Standard, and related matters.

10:15 a.m.–11:15 a.m.: Proposed Changes to the Review Process for Subsequent Combined License Applications (SCOLAs) (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the proposed changes to the SCOLA review process and related matters.

11:15 a.m.–12 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings and other matters related to the conduct of the ACRS business.

Note: A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

1 p.m.–1:45 p.m.: Preparation for Meeting with the Commission (Open)—The Committee will discuss the topics for the meeting with the Commission: Overview, PWR Sump Performance Issues, Committee Views on Power Uprates for BWRs and Development of the TRACE Thermal-Hydraulic System Analysis Code.

2 p.m.–3:30 p.m.: Meeting with the Commission (Open)—The Committee will meet with the Commission to discuss the topics listed above.

4 p.m.–4:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

4:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, November 8, 2008, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268–58269). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it may be necessary to close portions of this meeting noted above to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(2) and (6). In addition, it may be necessary to close a portion of the meeting to protect information designated as proprietary by General Electric-Hitachi or its contractors pursuant to 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Ms. Yoira Diaz-Sanabria, Cognizant ACRS staff (301–415–8064), between 7:30 a.m. and 4:15 p.m. (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: October 21, 2008.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–25567 Filed 10–24–08; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104–333,

110 Stat. 4097, as amended, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Thursday, November 13, 2008, at the St. Mary's Conference Center, 1111 Gough Street, San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to provide an Executive Director's report, to receive public comment at a second public meeting of the Presidio Trust's Board of Directors on the Draft Presidio Trust Management Plan Main Post Update and Draft Supplemental Environmental Impact Statement, and to receive public comment on other matters in accordance with the Presidio Trust's Public Outreach Policy.

Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415.561.5300 prior to November 6, 2008.

Time: The meeting will begin at 6:30 p.m. on Thursday, November 13, 2008.

ADDRESSES: The meeting will be held at the St. Mary's Conference Center, 1111 Gough Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415.561.5300.

Dated: October 20, 2008.

Karen A. Cook,

General Counsel.

[FR Doc. E8–25492 Filed 10–24–08; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Roundtable on Mark-to-Market Accounting on Wednesday, October 29, 2008 beginning at 9 a.m.

The Roundtable will take place in the Auditorium of the Commission's headquarters at 100 F Street, NE., Washington DC. The Roundtable will be open to the public with seating on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks.

The roundtable will consist of an open discussion on implications of mark-to-market accounting on the recent period of market turmoil. The roundtable will be organized as two panels, each consisting of investors, issuers, auditors and other parties with experience in mark-to-market accounting.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: October 21, 2008.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E8–25428 Filed 10–24–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58822; File No. SR–BSE–2008–47]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Change in the Percentage Ownership Interest in the Boston Options Exchange Group, LLC

October 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 14, 2008, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Schedule A of the Sixth Amended and Restated Operating Agreement (''BOX LLC Agreement''), of the Boston Options Exchange Group, LLC (''BOX''), in connection with the change in the percentage ownership interest of IB Exchange Corporation (''IB''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 13, 2004, the Commission approved four BSE proposals that together established, through an operating agreement among its owners, a Delaware limited liability company, BOX LLC, to operate BOX as an options trading facility of the Exchange.[5] On August 7, 2008, the Commission approved three BSE proposals that included a transfer of BSE's Ownership Interest in BOX to MX US 2, Inc. (''MX US 2''), a wholly owned U.S. subsidiary of the Montreal Exchange Inc. (''MX''), and an amendment to the BOX LLC Agreement among the BOX owners.[6]

BOX intends to purchase the BOX units (''Units'') held by a BOX LLC member (''Seller's Units'') representing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR–BSE–2003–17) (establishing a fee schedule for the proposed BOX facility); Securities Exchange Act Release No. 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR–BSE–2003–04) (creating Boston Options Exchange Regulation, LLC to which the BSE would delegate its self-regulatory functions with respect to the BOX facility); Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (approving trading rules for the BOX facility); Securities Exchange Act Release No. 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR–BSE–2003–19) (approving certain regulatory provisions of the operating agreement of BOX LLC).

[6] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02, SR–BSE–2008–23, and SR–BSE–2008–25).

an ownership interest of 1.09% and subsequently cancel the Seller's Units pursuant to Section 2.8(d) of the BOX LLC Agreement. As a result of this transaction, the percentage ownership interests of the other members of the BOX LLC Agreement will increase. In particular, IB's 19.87% ownership interest in BOX LLC will thereafter be 20.09%, and MX US 2, Inc.'s 53.24% ownership interest will increase to 53.83%.

Pursuant to Section 8.4(f) of the BOX LLC Agreement, any transfer of BOX Units that results in the acquisition and holding by any person, alone or together with any affiliate of such person, of an aggregate percentage interest level which meets or crosses the threshold level of 20% is subject to the rule filing process pursuant to Section 19 of the Act. In addition, Section 8.7 of the BOX LLC Agreement, as previously approved by the Commission, states that upon the valid transfer of all or any portion of a BOX Member's Units, the BOX Board shall amend Schedule A as may be necessary to reflect changes in the rights of Unit holders.[7]

As a result of IB crossing the 20% threshold level, the Exchange is submitting the proposed rule change and amended Schedule A of the BOX LLC Agreement to the Commission. This proposal, in compliance with Sections 8.4(f) and 8.7 of the BOX LLC Agreement, will allow BOX to amend Schedule A to reflect the changes in the percentage ownership interests of the other Unit holders that are the result of the transfer.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(1),[9] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act[10] in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30-days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[14] The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the transfer of ownership interests occurred on October 15, 2008, and there is no reason to delay implementation of the changes to Schedule A of the BOX LLC Agreement. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.[15]

Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BSE has requested that the Commission designate a shorter notification time. The Commission hereby waives the five-day notice period. As explained above, it was necessary for BSE to file its proposed rule change expeditiously so that the changes in the percentage ownership interest of the Unit holders can be immediately incorporated in the BOX LLC Agreement.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

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

*a Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2008–47 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2008–47. 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/*

[7] *See* Section 8.7, BOX LLC Agreement.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* 15 U.S.C. 78s(b)(3)(C).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2008–47 and should be submitted on or before November 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25536 Filed 10–24–08; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58817; File No. SR–CBOE–2008–105]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Registered Representative Fee and an Options Regulatory Fee

October 20, 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 October 14, 2008, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend its Fees Schedule to eliminate registered representative fees and institute a new transaction-based ''Options Regulatory Fee.'' The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Registered representative fees (''RR Fees'') as well as other regulatory fees collected by the Exchange are intended to cover a portion of the cost of the Exchange's regulatory programs.[3] The Exchange has assessed RR Fees since 1990. Each CBOE member firm that registers a financial advisor (or registered representative), Registered Options Principal or Financial/Operations Principal is assessed RR Fees based on the action associated with the registration. There are annual fees as well as initial, transfer and termination fees.[4] Today all options exchanges, regardless of size, charge similar registered representative fees.

Some member firms have raised concerns that the current self-regulatory organization (''SRO'') regulatory fee structure, in which every options exchange charges similar fees to their member firms, does not appear justified. Each RR Fee is a fixed amount of money a member firm pays to the Exchange for each registered representative within the firm. The Exchange believes that RR Fees are no longer the most equitable manner to assess regulatory fees because today there are more Internet and discount brokerage firms with few registered representatives that pay little in RR Fees and fewer traditional brokerage firms with many registered representatives. The regulatory effort the Exchange expends to review the transactions of each type of firm is not commensurate with the number of registered representatives that each firm employs.

In addition, due to the manner in which RR Fees are charged, it is possible for a member firm to restructure its business to avoid paying these fees altogether. A firm can avoid RR Fees by terminating its CBOE membership and sending its business to the Exchange through another member firm, even an affiliated firm that has many fewer registered representatives. If member firms terminated their memberships to avoid RR Fees, the Exchange would suffer the loss of a major source of funding for its regulatory programs. The Exchange notes that one member firm has already terminated its membership to avoid RR Fees. The Exchange believes other firms will do the same unless the Exchange changes it regulatory fee structure.

Options Regulatory Fee

In order to address the concerns raised by member firms and to avoid the possibility of losing significant regulatory fee revenue, the Exchange proposes to eliminate RR Fees and replace them with a transaction-based ''Options Regulatory Fee'' (''ORF''). The ORF would be $.0045 per contract and would be assessed by the Exchange to each member for all options transactions executed by the member that are cleared by The Options Clearing Corporation (''OCC'') in the customer range (i.e., that clear in the customer account of the member's clearing firm at OCC), excluding P/A Orders as defined in the Options Intermarket Linkage Plan (''Linkage''). The ORF would be imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange.[5] The ORF would be collected

[3] In addition to RR Fees, CBOE derives revenue associated with its regulatory programs from Designated Examining Authority (''DEA'') Fees and Communication Review Fees. These fees are discussed further below.

[4] *See* Section 12(A) of the CBOE Fees Schedule and CBOE Rule 2.22.

[5] The ORF would apply to all ''B'', ''C'', and ''W'' account origin code orders executed by a member on the Exchange. CBOE order origin codes are defined in CBOE Regulatory Circular RG08–105. Exchange rules require each member to record the appropriate account origin code on all orders at the

indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The ORF would become effective on January 1, 2009, at which time RR Fees would be eliminated. The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange has set the ORF at a rate that it anticipates will approximately replace the amount of revenue that would be lost from the elimination of RR Fees.

The ORF would not be charged for member options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members.[6] The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. Thus, the Exchange believes members are already paying their fair share of the costs of regulation.[7] Moreover, because the ORF would replace RR Fees, which relate to a member's customer business, the Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC.

The Exchange expects that member firms will pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by SROs to help the SROs meet their obligation under Section 31 of the Exchange Act.

The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs. The total amount of regulatory fees collected by the Exchange is significantly less than the regulatory costs incurred by the Exchange on an annual basis. In general, on a year over year basis, regulatory fee revenue (not including regulatory fine revenue) only covers about 65% of the Exchange's regulatory costs.

RR Fees make up the largest part of the Exchange's total regulatory fee revenue. The Exchange collects other regulatory revenues from DEA Fees,[8] and Communication Review Fees.[9] The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange would monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange expects to monitor regulatory costs and revenues at a minimum on an annual basis. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange would adjust the ORF by submitting a fee change filing to the Commission. The Exchange would notify members of adjustments to the ORF via regulatory circular.

The Exchange believes the proposed ORF is equitably allocated because it would be charged to all members on all their customer options business (as defined above). The Exchange believes the proposed ORF is reasonable because it will raise revenue related to the amount of customer options business conducted by members, and thus the amount of Exchange regulatory services those members will require, instead of how many registered persons a particular member firm employs.[10]

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by its members and their associated persons with the Exchange Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, insider trading, frontrunning, contrary exercise advice violations and locked/crossed markets in connection with the Linkage.[11] Also, CBOE and the other options exchanges are required to populate a consolidated options audit trail (''COATS'') system in order to surveil member activities across markets.[12]

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues.[13] Through its participation in the Intermarket Surveillance Group (''ISG'') the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket

time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the rules of the Exchange and report resulting transactions to the OCC. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[6] For example, non-broker-dealer customers generally are not charged transaction fees to trade equity options on the Exchange.

[7] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to impose the ORF or a separate regulatory fee on members if the Exchange deems it advisable.

[8] The Exchange assesses the DEA Fee to each firm for which the SEC has designated the Exchange to be the DEA pursuant to SEC Rule 17d–1. The DEA Fee is intended to reimburse the Exchange for its costs associated with examining member firms and is generally the same throughout the SRO community. Currently the rate is set at $0.40 per $1,000.00 of gross revenue for the firm. *See* Section 12(C) of the CBOE Fees Schedule.

[9] Although the Financial Industry Regulatory Authority (''FINRA'') is the SRO that reviews most securities industry advertisements and other communications, a number of firms still prefer to have CBOE review their materials. These requests are charged at $150 per regular occurrence (unless it involves extended review, such as a book) and $1,000 for an expedited, two-day turnaround. *See* Section 12(E) of the CBOE Fees Schedule.

[10] The Exchange expects that implementation of the proposed ORF will result generally in many traditional brokerage firms paying less regulatory fees while Internet and discount brokerage firms will pay more.

[11] The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by their common members with rules for expiring exercise declarations (formerly known as contrary exercise advices). *See* Securities Exchange Act Release No. 56941 (December 11, 2007), 72 FR 71723 (December 18, 2007). *See also* Securities Exchange Act Release No. 57649 (April 11, 2008), 73 FR 20976 (April 17, 2008) (approving an amendment which sought to add The Nasdaq Stock Market, LLC as a participant to such agreement). The Exchange and other options SROs have recently filed with the Commission an amendment to this agreement to include the allocation of examination responsibility with respect to options position limits. The Exchange retains significant regulatory responsibilities under this agreement. The Exchange notes within the last year it brought charges against members in two separate cases relating to member activity on CBOE as well as on another exchange. One case involved a contrary exercise advice violation and the other a position limit violation.

[12] COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules.

[13] Recently the Exchange, at the direction of the SEC, led a sweep examination of member firms relating to compliance with Regulation SHO that involved reviewing data with respect to members of other exchanges and coordinating such reviews with other exchanges. As a result of this examination, the Exchange has been assisting FINRA with a Regulation SHO review of a firm for which the Exchange is not the DEA.

manipulation and trading abuses.[14] The Exchange's participation in ISG helps it to satisfy the Exchange Act requirement that it have coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.[15]

The Exchange believes that charging the ORF across markets will avoid having members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share of regulation. If the ORF did not apply to activity across markets, then members would send their orders to the least cost, least regulated exchange. Other exchanges would, of course, be free to impose a similar fee on their member's activity, including the activity of those members on CBOE.

Finally, there is established precedent for an SRO charging a fee across markets, namely, FINRA's Trading Activity Fee.[16] While the Exchange does not have all of the same regulatory responsibilities as FINRA, the Exchange believes (as described above) that its broad regulatory responsibilities with respect to its members' activities, irrespective of where their transactions take place, supports a regulatory fee applicable to transactions on other markets. Unlike the TAF, the ORF would apply only to a member's customer options transactions.

Related Rule Text Changes: In addition to being set forth in Section 12 of the CBOE Fees Schedule, DEA Fees and RR Fees are also set forth in CBOE Rules 2.22(a) and (b), respectively. The Exchange proposes to delete paragraph (b) from Rule 2.22 to reflect the elimination of RR Fees. The Exchange proposes to delete paragraph (a) from Rule 2.22 relating to DEA Fees because the Exchange does not believe it is necessary for those fees to be set forth in the rule since they are included on the CBOE Fees Schedule. Also, as a housekeeping matter, the Exchange proposes to delete Interpretation and Policy .01 to Rule 2.22 because it relates to charges imposed for services rendered by Order Book Officials (''OBOs'') and the Exchange no longer employs OBOs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[17] in general, and furthers the objectives of Section 6(b)(4)[18] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the ORF is objectively allocated to CBOE members because it would be charged to all members on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those member firms that require more Exchange regulatory services based on the amount of customer options business they conduct.

The Exchange believes the initial level of the fee is reasonable because it relates to the recovery of the costs of supervising and regulating members and it is expected to equal the Exchange's revenue from RR Fees for 2007. The Exchange notes that the Commission has addressed the funding of an SRO's regulatory operations in the Concept Release Concerning Self-Regulation[19] and the release on the Fair Administration and Governance of Self-Regulatory Organizations.[20] In the Concept Release, the Commission states that: ''Given the inherent tension between an SRO's role as a business and as a regulator, there undoubtedly is a temptation for an SRO to fund the business side of its operations at the expense of regulation.''[21] In order to address this potential conflict, the Commission proposed in the Governance Release rules that would require an SRO to direct monies collected from regulatory fees, fines, or penalties exclusively to fund the regulatory operations and other programs of the SRO related to its regulatory responsibilities.[22] The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[23] and subparagraph (f)(2) of Rule 19b–4[24] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–105 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–105. 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

[14] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[15] *See* Exchange Act Section 6(h)(3)(I).

[16] *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] *See* Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) (''Concept Release'').

[20] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (''Governance Release'').

[21] Concept Release at 71268.

[22] Governance Release at 71142.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2008–105 and should be submitted on or before November 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25502 Filed 10–24–08; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58823; File No. SR–CBOE–2007–30]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Amendments to Rule 9.21 (Communications to Customers)

October 21, 2008.

On March 19, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1], and Rule 19b–4 thereunder.[2] CBOE filed Amendment No. 1 to the proposed rule change on June 9, 2008.[3] Notice of the proposal, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 17, 2008.[4] The Commission received one comment letter regarding the proposed rule change[5] and a response to comments from CBOE.[6] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

On December 23, 2002, the Commission published final rules that exempt standardized options, as defined in Rule 9b–1[7] under the Exchange Act, that are issued by a registered clearing agency and traded on a registered national securities exchange or on a registered national securities association, from all provisions of the Securities Act (other than the anti-fraud provisions) and the registration requirements of the Exchange Act.[8] Because the Securities Act of 1933 (''Securities Act'')[9] and the rules thereunder (other than the anti-fraud provisions) are no longer applicable to such standardized options, CBOE proposed to remove elements of the Securities Act that are embedded in CBOE Rule 9.21 (''Communications to Customers''). In particular, CBOE proposed to remove all references to a ''prospectus'' from Rule 9.21. Prospectuses are no longer required for such standardized options, and the Options Clearing Corporation has, in fact, ceased publication of a prospectus.[10] In addition, the proposed amendments expand the types of communications governed by Rule 9.21 to include independently prepared reprints and other communications between a member or member organization and a customer, exempt certain options communications from the pre-approval requirement by a Registered Options Principal (''ROP'') and update and reorganize Rule 9.21. The proposed amendments are similar to amendments filed with the Commission by the Financial Industry Regulatory Authority, Inc. (''FINRA'').[11]

A. Deletion of Certain Provisions

As noted above, CBOE Rule 9.21 contains a number of references to a prospectus and other Securities Act requirements. The Exchange proposed to delete the following from Rule 9.21:

(1) Rule 9.21(a)(iv), which references the Securities Act definition of prospectus,

(2) Rule 9.21(d), which incorporates Securities Act principles in that it prohibits written material concerning options from being furnished to any person who has not previously or contemporaneously received the ODD,

(3) Rule 9.21(e)(ii), which defines the term ''Educational Material,''[12]

(4) Interpretation and Policy .02A of Rule 9.21, which outlines what is permitted in an ''Advertisement,''[13] and

(5) Interpretation and Policy .03 of Rule 9.21, which concerns educational material.[14]

B. Redesignation of Rule 9.21(a) to Proposed Rule 9.21(d) and Related Amendments

Rule 9.21(a) currently contains an outline of the ''General Rule'' for options communications. CBOE proposed to redesignate paragraph (a) as paragraph (d), and to incorporate limitations on the use of options communications contained in Interpretations and Policies .01 of Rule 9.21 into proposed Rule 9.21(d). In addition, proposed Rule 9.21(d)(iii) would amend Rule 9.21(a)(iii) by clarifying the types of cautionary statements and caveats that are prohibited. Also, as previously noted, CBOE proposed to delete Rule 9.21(a)(iv).

C. Proposed Amendments to Rule 9.21(b)

CBOE proposed to amend Rule 9.21(b) to include the types of communications

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 58138 (Jul. 10, 2008) 73 FR 40886 (Jul. 17, 2008) (SR–CBOE–2007–30) (notice).

[5] *See* Letter from Melissa MacGregor, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated July 31, 2008.

[6] *See* Letter from Lawrence J. Bresnahan, Vice President, CBOE, dated September 30, 2008.

[7] 17 CFR 240.9b–1.

[8] *See* ''Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934; Final Rule,'' Securities Act Release No. 8171 and Exchange Act Release No. 47082 (Dec. 23, 2002), 68 FR 188 (Jan. 2, 2003).

[9] 15 U.S.C. 77a *et seq.*

[10] The options disclosure document (''ODD'') prepared in accordance with Rule 9b–1 under the Exchange Act is not deemed to be a prospectus. 17 CFR 230.135b. *See, e.g.,* Securities Act Release No. 8049 (Dec. 21, 2001), 67 FR 228 (Jan. 2, 2002).

[11] *See* Securities Exchange Act Release No. 57720 (Apr. 25, 2008) 73 FR 24332 (May 2, 2008), Exchange Act Release No. 58738 (approval order) (Oct. 6, 2008) 73 FR 60371 (Oct. 10, 2008) (SR–FINRA–2008–13).

[12] This paragraph essentially incorporates language of Securities Act Rule 134a. While this amendment would eliminate the separate educational material category, as discussed below the Exchange also proposed to revise the definition of Sales Literature to include educational material.

[13] This paragraph essentially incorporates language of Securities Act Rule 134.

[14] *See* note 12, *supra*.

proposed to be added to the definition of ''Options Communications'' in proposed Rule 9.21(a). Proposed Rules 9.21(b)(ii) and (b)(iii) would also amend the current requirements to obtain advance approval by a ROP for most options communications by exempting certain options communications, defined as ''Correspondence'' and ''Institutional Sales Material.'' Specifically, proposed Rule 9.21(b)(ii) would exempt correspondence from the pre-approval requirement unless the correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise promotes a product or service of the member. All correspondence would be subject to general supervision and review requirements.[15] Proposed Rule 9.21(b)(iii) would exempt institutional sales material from the pre-approval requirement if the material is distributed to ''qualified investors'' (as defined in Section 3(a)(54) of the Exchange Act [16]).

Pre-approval by a ROP would, however, be required with respect to independently prepared reprints. In addition, Proposed Rule 9.21(b)(iv) would require that firms retain options communications in accordance with the recordkeeping requirements of Rule 17a–4 under the Exchange Act.[17] Proposed Rule 9.21(b)(iv) would also require that firms retain other related documents in the form and for the time periods required for options communications by Rule 17a–4.

D. Proposed Amendments to Rule 9.21(c)

Rule 9.21(c) currently requires members to obtain approval for every advertisement and all educational material from the Exchange's Department of Compliance. This requirement applies regardless of whether the options communications are used before or after the delivery of a current ODD. CBOE proposed to amend this provision to require approval by the Exchange only with respect to options communications used prior to the delivery of a current ODD. The Exchange pre-approval requirement for options communications used subsequent to the delivery of the ODD is being eliminated because the ODD should help alert the customer to the characteristics and risks associated with trading in options and because Rule 9.21(b) requires the Registered Options Principal of a member organization to pre-approve options communications (with certain exceptions for ''Correspondence'' and ''Institutional Sales Material''). Rule 9.21(c) would also be amended to include the types of communications added to the definition of ''Options Communications'' in proposed Rule 9.21(a).

E. Redesignation of Rule 9.21(e) to Proposed Rule 9.21(a) and Related Amendments

Rule 9.21(e) currently defines terms used in Rule 9.21. CBOE proposed to redesignate paragraph (e) as paragraph (a). CBOE also proposed to amend the definition of ''Options Communications'' in proposed Rule 9.21(a) to expand the types of communications governed by Rule 9.21 to include independently prepared reprints and other communications between a member or member organization and a customer. The Exchange proposed to amend the definitions of ''Advertisement'' and ''Sales Literature;'' and define ''Correspondence,'' ''Institutional Sales Material,'' ''Public Appearances,'' and ''Independently Prepared Reprints;'' to clarify the rule. In addition, as previously noted, CBOE proposed to delete the definition of ''Educational Material.''

F. Proposed Rule 9.21(e)

Proposed Rule 9.21(e) would set forth (i) standards for options communications that are not preceded or accompanied by an ODD and (ii) standards for options communications used prior to delivery of an ODD. These requirements generally would clarify and restate the requirements contained in the current Interpretations and Policies .02 of Rule 9.21.

G. Interpretations and Policies

Proposed Rule 9.21(e)(i)(B) would require options communications to contain contact information for obtaining a copy of the ODD. Proposed Interpretation and Policy .01 would include the provisions found in current Section A of Interpretation and Policy .02 regarding how this requirement may be satisfied. In addition, as noted above, the provisions of Interpretation and Policy .01 regarding limitations on the use of options communications are proposed to be incorporated into proposed Rule 9.21(d).

As previously noted, the provisions of Interpretation and Policy .02 that outline what is permitted in an advertisement are proposed to be deleted and the provisions relating to standards for options communications used prior to delivery of the ODD are proposed to be incorporated into proposed Rule 9.21(e)(ii).

Interpretation and Policy .03, which concerns educational material, is proposed to be deleted as noted above.

Interpretation and Policy .04 sets forth the standards applicable to Sales Literature. Section A of Interpretation and Policy .04 sets forth the requirement that Sales Literature shall state that supporting documentation for any claims, comparisons, recommendations, statistics or other technical data will be supplied upon request. The Exchange proposed to redesignate Section A of Interpretation and Policy .04 as proposed Rule 9.21(d)(vii).

Section B of Interpretation and Policy .04 pertains to standards for Sales Literature that contains projected performance figures. Section C of Interpretation and Policy .04 pertains to standards for Sales Literature that contains historical performance figures. The Exchange proposed to redesignate Section B of Interpretation and Policy .04 as proposed Interpretation and Policy .02 and Section C of Interpretation and Policy .04 as proposed Interpretation and Policy .03.

Rule 9.21 currently requires that a copy of the ODD precede or accompany options related sales literature. The Exchange is proposing to modify the ODD delivery requirement applicable to sales literature to provide that an ODD must precede or accompany any communication that conveys past or projected performance figures involving options or constitutes a recommendation pertaining to options.[18]

A notice providing the name and address of a person from whom the ODD may be obtained would be required in sales literature that does not contain a recommendation or past or projected performance figures. Because CBOE is proposing to merge educational material into the sales literature category,[19] this amendment would continue to allow communications that are educational in nature to be disseminated without being preceded or accompanied by a copy of the ODD.

The Exchange proposed to redesignate Section D of Interpretation and Policy .04 as proposed Interpretation and

[15] *See* CBOE Rule 9.8.

[16] 15 U.S.C. 78c(a)(54).

[17] 17 CFR 240.17a–4. More specifically, Rule 17a–4(b)(4) requires that a broker-dealer retain ''originals of all communications received and copies of all communications sent * * * including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public.''

[18] *See* proposed Rule 9.21(e)(i)(C) and proposed Interpretation and Policies .02 and .03.

[19] *See* Proposed Rule 9.21(a)(ii).

Policy .04. The Exchange proposed to delete Sections E and F of Interpretation and Policy .04. The Exchange believes Section E is unnecessary because worksheets are included in the definition of ''Sales Literature.'' The Exchange believes Section F is no longer necessary because the Exchange is proposing to clarify the record-keeping requirements applicable to options communications in proposed Rule 9.21(b)(iv).

II. Comment Letter

The Commission received one comment letter from SIFMA on the proposed rule change.[20] CBOE responded to this comment letter.[21]

SIFMA expressed support for the proposed rule change and incorporated by reference SIFMA's prior comments on a similar proposal by FINRA regarding options communications with the public.[22] FINRA addressed SIFMA's prior comments in an amendment to FINRA's proposed rule change.[23] CBOE stated it concurred in general with FINRA's responses to SIFMA's prior comments.[24] Therefore, CBOE did not believe that additional changes to the proposed rule change were required.[25]

III. Discussion and Findings

After careful review of the proposed rule change, the comment letter and CBOE's response to the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder that are applicable to a national securities exchange.[26] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [27] in general and would further the objectives of Section 6(b)(5) [28] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest by providing the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity by promoting harmonization between CBOE's and other SROs' options communications rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–CBOE–2007–30), as modified by Amendment No. 1 thereto, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25504 Filed 10–24–08; 8:45 am]

BILLING CODE 8011–01–P

[20] *See* note 5, *supra*.

[21] *See* note 6, *supra*.

[22] *See* Letter from Melissa MacGregor, Vice President and Assistant General Counsel, SIFMA, dated May 22, 2008, regarding Exchange Act Release No. 57720 (Apr. 25, 2008) 73 FR 24332 (May 2, 2008).

[23] *See* Securities Exchange Act Release No. 58738 (Oct. 6, 2008) 73 FR 60371 (Oct. 10, 2008) (SR–FINRA–2008–13).

[24] *See* note 6, *supra*.

[25] *See id*.

[26] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58828; File No. SR–CBOE–2008–107]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rules Relating to the Minimum Size Requirement for Quotations

October 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 14, 2008, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b-4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules pertaining to the minimum size requirement for quotations. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend its rules pertaining to the minimum size requirement for quotations. Currently, the initial size of a Market-Maker's, DPM's or LMM's electronic quotation must be for at least 10 contracts, unless the underlying primary market is disseminating a 100-share quote. In that case, the quote size can be as low as one contract.[5] In open outcry, the minimum quotation size is ten contracts for non-broker-dealer orders and one contract for broker-dealer orders. (*See, e.g.*, CBOE Rules 8.7, 8.14, and 8.15A.)

CBOE proposes to amend its rules to allow the Exchange to set a minimum quotation size requirement for electronic and open outcry quotes on a class by class basis, provided the minimum set by the Exchange is at least one contract.[6] CBOE would not impose a minimum quotation size requirement greater than 10 contracts. With respect to trading in open outcry, the minimum quotation size requirement could be different for non-broker-dealer orders and broker-dealer orders as is currently the case.

Although CBOE at this time does not anticipate lowering the minimum quotation size requirement from its current level of 10 contracts to one

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b-4(f)(6).

[5] Pursuant to Rule 6.2B, if the underlying primary market disseminates less than a 1000-share quote immediately prior to the time an opening quote is submitted, the opening quote may be for as low as one contract.

[6] The minimum quotation size determined by CBOE might vary depending on the quotation size disseminated by the underlying primary market, as is currently permitted.

contract, it believes it should have the flexibility to change the minimum size requirement on a class by class basis depending on market conditions and the trading and liquidity in a particular option class and its underlying security. CBOE notes that the minimum quotation size requirement for market-makers on NYSEArca and the Nasdaq Options Market is only one contract. (*See* NYSEArca Rule 6.37B and Nasdaq Options Market Rule Section 6(a).) As a result, CBOE believes the proposed rule change is based on and similar to the rules of other options exchanges.

CBOE also proposes to make a technical change to Rule 6.2B, Interpretation .03 to delete the reference to RMM, which CBOE previously deleted from its rules.

2. Statutory Basis

The proposed rule change would permit the Exchange to set a minimum quotation size requirement on a class by class basis, provided the minimum size is at least one contract. CBOE believes that this flexibility will enable the Exchange to take into consideration market conditions and the trading and liquidity in a particular option class and its underlying security. As a result, the Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act [8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–107 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2008–107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–107 and should be submitted on or before November 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25537 Filed 10–24–08; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) under the Act requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this notice requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58829; File No. SR–CBOE–2008–108]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Immediately Add Two New VIX Option Series Within Five Days of Expiration

October 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2008, the Chicago Board Options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is seeking to immediately list two new series of CBOE Volatility Index (''VIX'') options prior to expiration next Wednesday, October 22, 2008, notwithstanding Interpretation and Policy .01(c) to Rule 24.9, *Terms of Index Option Contracts.* The Exchange is not proposing any rule text changes. Although the proposed rule change would not amend the text of Rule 24.9.01(c), the proposed change would have the effect of permitting the Exchange to immediately add two new series of VIX options within five business days prior to VIX expiration on Wednesday, October 22, 2008.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to allow the Exchange to immediately list two new series of VIX options prior to expiration next Wednesday, October 22, 2008.

The Exchange notes the exceptional market circumstances giving rise to this limited request relate only to VIX options. The Exchange states that this request will facilitate the functioning of the Exchange's market and will not harm investors or the public interest. VIX options are a unique product traded only at CBOE and unprecedented market volatility has caused the Exchange to respond to requests from market participants to offer the limited request sought by this proposal.

Interpretation and Policy .01(c) to Rule 24.9 provides, ''[n]ew series of index option contracts may be added up to the fifth business day prior to expiration.'' Under this Rule 24.9.01(c), the last day for the Exchange to add new series of expiring October VIX option was Wednesday, October 15, 2008.

However, given the current extraordinary market conditions and considerable market volatility, the Exchange has received user requests to add two new additional VIX option series—110 and 120 strikes expiring next Wednesday, October 22, 2008. The Exchange believes that these requests are reasonable and will allow for more efficient risk management. Specifically, liquidity providers are selling the 100 October 2008 VIX option contracts without the ability to hedge those positions with an option having a higher strike. Currently, the highest strike listed for expiring October 2008 VIX options is 100. In addition, the Exchange believes that because of the recent volatility in the market, the addition of the two VIX option series will help prepare the market in the event there are large shifts in the time remaining until expiration. On the day of this filing, the VIX level reached 81.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements provided under Section 6(b)(5) [5] of the Act, that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The addition of the two requested VIX option series will facilitate the functioning of the Exchange's market by allowing for more efficient risk management and will not harm investors or the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[8] However, Rule 19b–4(f)(6)(iii) [9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to immediately list the two new VIX option series prior to expiration on Wednesday, October 22, 2008.[10] In particular, the addition by the Exchange of these two VIX option series has been necessitated, in the opinion of CBOE, by the current extraordinary market conditions and unusual levels of volatility. Allowing CBOE to immediately offer these new series will allow market participants to efficiently manage their volatility risk in current market conditions and will help market participants prepare for any potential significant movements in the VIX that may occur prior to expiration.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78(f)(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange fulfilled this requirement.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] *Id.*

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's effect on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2008–108 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2008–108. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–108 and should be submitted on or before November 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25538 Filed 10–24–08; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58818; File No. 4–569]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and BATS Exchange, Inc.

October 20, 2008.

On August 27, 2008, BATS Exchange, Inc. (''BATS'') and the Financial Industry Regulatory Authority, Inc. (''FINRA'') (together with BATS, the ''Parties'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] a plan for the allocation of regulatory responsibilities, dated August 25, 2008 (''17d–2 Plan'' or the ''Plan''). The Plan was published for comment on September 24, 2008.[3] The Commission received no comments on the Plan. This order approves and declares effective the Plan.

I. Introduction

Section 19(g)(1) of the Act,[4] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d) or section 19(g)(2) of the Act.[5] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] *See* Securities Exchange Act Release No. 58563 (September 17, 2008), 73 FR 55180.

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of both BATS and FINRA. Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for those BATS members that are also members of FINRA and the associated persons therewith (''Dual Members'') with respect to certain applicable laws, rules, and regulations.[11]

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the ''BATS Exchange Rules Certification for 17d–2 Agreement with FINFA,'' referred to herein as the ''Certification'') that lists every BATS rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to Dual Members.

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of BATS that are substantially similar to the applicable rules of FINRA, as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification (''Common Rules''). Common Rules would not include the application of any BATS rule or FINRA rule, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement under Rule 17d–2.[12] In the event that a Dual Member is the subject of an investigation relating to a transaction on BATS, the plan acknowledges that BATS may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.[13]

Under the Plan, BATS would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving BATS' own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any BATS rules that are not Common Rules, except for BATS rules for any broker-dealer subsidiary of BATS Holding, Inc.[14] Apparent violations of any BATS rules by any broker-dealer subsidiary of BATS Holdings, Inc. will be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA.[15]

III. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in section 17(d) of the Act[16] and Rule 17d–2(c) thereunder[17] in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Dual Members that would otherwise be performed by both BATS and FINRA. Accordingly, the proposed Plan promotes efficiency by reducing costs to Dual Members. Furthermore, because BATS and FINRA will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection.

The Commission notes that when it granted the application of BATS for registration as a national securities exchange, the Commission conditioned the operation of the BATS exchange on the satisfaction of several requirements.[18] One of those requirements was the effectiveness of an agreement pursuant to Rule 17d–2 between FINRA and BATS that allocates to FINRA regulatory responsibility for certain specified matters, or, alternatively, the demonstration by BATS that it independently has the ability to fulfill all of its regulatory obligations.[19] The proposed 17d–2 Plan represents BATS' effort to satisfy that prerequisite.

The Commission notes that, under the Plan, BATS and FINRA have allocated regulatory responsibility for those BATS rules, set forth on the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule. In addition, under the Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

Under the Plan, BATS would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving BATS' own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any BATS rules that are not Common Rules, except for BATS rules for any broker-dealer subsidiary of BATS Holding, Inc.[20] Apparent violations of any BATS rules by any broker-dealer subsidiary of BATS Holdings, Inc. will be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA.[21] The effect of these provisions is that regulatory oversight and enforcement responsibilities for any broker-dealer subsidiary of BATS Holdings, Inc., which is the parent company of BATS, will be vested with FINRA. These provisions should help avoid any potential conflicts of interest that could arise if BATS was primarily responsible

[11] *See* Paragraph 1(c) of the proposed 17d–2 Plan (defining ''Dual Members'').

[12] *See* paragraph 1(b) of the proposed 17d–2 Plan. *See also* Securities Exchange Act Release Nos. 58350 (August 13, 2008), 73 FR 48247 (August 18, 2008) (File No. 4–566) (notice of filing of proposed plan); and 58536 (September 12, 2008) 73 FR 54646 (September 22, 2008) (File No. 4–566) (order approving and declaring effective the plan). The Certification identifies several Common Rules that may also be addressed in the context of regulating insider trading activities pursuant to the proposed separate multiparty agreement.

[13] *See* paragraph 6 of the proposed 17d–2 Plan.

[14] *See* paragraph 2 of the proposed 17d–2 Plan.

[15] *See* paragraph 6 of the proposed 17d–2 Plan.

[16] 15 U.S.C. 78q(d).

[17] 17 CFR 240.17d–2(c).

[18] *See* Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182).

[19] *See* Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498, 49507 (August 21, 2008) (File No. 10–182).

[20] *See* paragraph 2 of the proposed 17d–2 Plan.

[21] *See* paragraph 6 of the proposed 17d–2 Plan.

for regulating its affiliated broker-dealers.

According to the Plan, BATS will review the Certification, at least annually, or more frequently if required by changes in either the rules of BATS or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add BATS rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete BATS rules included in the then-current list of Common Rules that are no longer substantially similar to FINRA rules; and confirm that the remaining rules on the list of Common Rules continue to be BATS rules that are substantially similar to FINRA rules.[22] FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. Under the Plan, BATS will also provide FINRA with a current list of Dual Members and shall update the list no less frequently than once each quarter.[23]

The Commission is hereby declaring effective a plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all BATS rules that are substantially similar to the rules of FINRA for Dual Members of BATS and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to BATS rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should the Parties decide to add a BATS rule to the Certification that is not substantially similar to a FINRA rule; delete a BATS rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a BATS rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act and noticed for public comment.[24]

The Plan also permits BATS and FINRA to terminate the Plan, subject to notice.[25] The Commission notes, however, that while the Plan permits the Parties to terminate the Plan, the Parties cannot by themselves reallocate the regulatory responsibilities set forth in the Plan, since Rule 17d–2 under the Act requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission.[26]

IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–569. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to section 17(d) of the Act, that the Plan in File No. 4–569, between FINRA and BATS, filed pursuant to Rule 17d–2 under the Act, is approved and declared effective.

It is therefore ordered, that BATS is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4–569.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25503 Filed 10–24–08; 8:45 am]

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[22] *See* paragraph 2 of the proposed 17d–2 Plan.

[23] *See* paragraph 3 of the proposed 17d–2 Plan.

[24] The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Plan for examining, and enforcing compliance by, Dual Members, also would constitute an amendment to the Plan.

[25] *See* paragraph 12 of the proposed 17d–2 Plan.

[26] The Commission notes that paragraph 12 of the Plan reflects the fact that FINRA's responsibilities under the Plan will continue in effect until the Commission approves any termination of the Plan.

[27] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58824; File No. SR–NYSEALTR–2008–02]

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC To Amend NYSE Alternext Equities Rule 123D(4) To Expand That Rule's Trading Halt Condition To Cover All Structured Products

October 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 2008, NYSE Alternext US LLC (''NYSE Alternext'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Alternext Equities Rule 123D(4) to expand the application of the trading halt condition provided by that rule to include all NYSE Alternext listed structured products. The text of the proposed rule change is available on the Exchange's Web site (*http://www.amex.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Alternext has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 30, 2008, NYSE Euronext (the parent company of two other exchanges—New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc.), completed its acquisition of the Exchange (the ''Merger''). In connection with the Merger, NYSE Alternext will relocate all equities trading currently conducted on or through the Amex legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to the NYSE trading facilities and systems located at 11 Wall Street, New York, New York (the ''NYSE Alternext Trading Systems''), which will be operated by the NYSE on behalf of NYSE Alternext (the ''Equities Relocation''). In anticipation of the Equities Relocation, the Exchange has adopted the NYSE's trading rules as the ''NYSE Alternext Equities Rules,'' to be implemented at the time of the Equities Relocation.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63).

NYSE Euronext has made a business decision to discontinue the listing and trading of exchange traded funds (''ETFs'') and structured products on the Exchange at the time of the Equities Relocation and to encourage the issuers of those securities to transfer their listings to NYSE Arca. As such, the NYSE Alternext Equities Rules do not provide for the trading of ETFs and structured products and the NYSE Alternext Trading Systems will not be equipped for such trading. However, some of the issuers of ETFs and structured products may not have completed the transfer of their listed securities to NYSE Arca prior to the Equities Relocation. It would be prohibitively expensive to keep open the trading floor at 86 Trinity Place to facilitate the trading of a limited number of ETFs and structured products pending their transfer to NYSE Arca. To address this problem as it relates to ETFs, the Exchange included Rule 123D(4) in the NYSE Alternext Equities Rules. Rule 123D(4) provides for a non-regulatory trading halt condition to permit the halting of trading of ETFs on the Exchange to facilitate the closing of the 86 Trinity Place trading floor in connection with the Equities Relocation. Orders in ETFs subject to the trading halt condition are to be routed to NYSE Arca for execution.

Rule 123D(4) as adopted does not apply to structured products that remain listed on the Exchange at the time of the Equities Relocation. As the same problem arises in connection with the continued trading of structured products on the Exchange after the Equities Relocation as arises with ETFs, the Exchange proposes to extend the application of Rule 123D(4) to any structured products that remain listed at that time. In order for Rule 123D(4) to comprehensively apply to all ETFs and structured products, the Exchange proposes to extend its application to securities listed pursuant to Sections 104 (Bonds and Debentures), 106 (Currency and Index Warrants), or 107 (Other Securities) of the Exchange's Company Guide or pursuant to Exchange Rules 1000–AEMI and 1001 *et seq.* (Portfolio Depositary Receipts), 1000A–AEMI and 1001A *et seq.* (Index Fund Shares), 1000B *et seq.* (Managed Fund Shares), 1200–AEMI and 1201 *et seq.* (Trading of Trust Issued Receipts), 1200A–AEMI and 1201A *et seq.* (Commodity-Based Trust Shares), 1400 *et seq.* (Trading of Paired Trust Shares), 1500–AEMI and 1501 *et seq.* (Trading of Partnership Units), and 1600 *et seq.* (Trading of Trust Units).

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed amendment facilitates transactions in securities because it will make it easier for issuers of structured products listed on the Exchange to ensure the continuity of trading of their securities after the closing of the Exchange's trading floor at 86 Trinity Place and pending transfer of the listing of those securities to NYSE Arca.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Act.[5]

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed rule change is noncontroversial because it will make it easier for issuers of structured products listed on the Exchange to ensure the continuity of trading of their securities after the closing of the 86 Trinity Place trading floor and pending transfer of the listing of those securities to NYSE Arca. The Exchange believes that the proposed amendment to Rule 123D(4) does not raise any novel regulatory issues as it simply extends the trading halt condition to structured products under the same circumstances in which it applies to ETFs.

The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change as required by Rule 19b–4(f)(6).[6]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEALTR–2008–02 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–NYSEALTR–2008–02. 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

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 C.F.R. 240.19b–4(f)(6).

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–NYSEALTR–2008–02 and should be submitted on or before November 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25528 Filed 10–24–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58825; File No. SR–NYSEArca–2008–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(3) in Connection With Generic Listing Standards for Multiple Fund Shares and Inverse Fund Shares

October 21, 2008.

I. Introduction

On August 25, 2008, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 5.2(j)(3) in connection with generic listing standards for Multiple Fund Shares and Inverse Fund Shares. The proposed rule change was published for comment in the **Federal Register** on September 16, 2008.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58484 (September 8, 2008), 73 FR 53472.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Commentaries .01, .02, and .03 and to adopt new Commentary .04, to NYSE Arca Equities Rule 5.2(j)(3), the Exchange's initial listing standards for Investment Company Units (''ICUs''), to permit the listing and trading of ICUs issued by an open-end management investment company that seek to provide investment results, before fees and expenses, that either correspond to a specified multiple of the percentage performance on a given day of a particular benchmark domestic equity index, international equity index, Fixed Income Securities[4] index, or a combination thereof (''Multiple Fund Shares'') or that correspond inversely up to minus or negative 300 percent (−300%) of the percentage performance on a given day of a particular domestic equity index, international equity index, Fixed Income Securities index, or a combination thereof (''Inverse Fund Shares,'' and together with Multiple Fund Shares, collectively, ''Fund Shares''), in each case, pursuant to Rule 19b–4(e) under the Act.[5]

Specifically, the Exchange proposes to remove the current limitation to listing Multiple Fund Shares and Inverse Fund Shares[6] and to amend Commentaries .01, .02, and .03 to NYSE Arca Equities Rule 5.2(j)(3) to permit the Exchange to approve the listing and trading of Multiple Fund Shares and Inverse Fund Shares pursuant to Rule 19b–4(e) under the Act, *provided* that each of the applicable conditions and requirements set forth in Commentaries .01, .02, or .03 to NYSE Arca Equities Rule 5.2(j)(3), as proposed to be amended, and proposed Commentary .04 to NYSE Arca Equities Rule 5.2(j)(3) are satisfied.

Lastly, the Exchange proposes to make a minor, non-substantive language change to Commentary .02(ii) to NYSE Arca Equities Rule 5.2(j)(3).

Limitation on Leverage

In connection with the listing and trading of Multiple Fund Shares, Commentaries .01, .02, and .03 to NYSE Arca Equities Rule 5.2(j)(3), as amended, would not provide a limitation on leverage. Specifically, the proposal would permit the Exchange to approve, pursuant to Rule 19b–4(e) under the Act, the listing and trading of Multiple Fund Shares that seek to provide investment results, before fees and expenses, corresponding to any multiple, without limitation, of the percentage performance on a given day of a particular domestic or international equity index, Fixed Income Securities index, or a combination thereof.

In connection with Inverse Fund Shares, Commentaries .01, .02, and .03 to NYSE Arca Equities Rule 5.2(j)(3), as amended, would expressly prohibit the Exchange from approving pursuant to Rule 19b–4(e) under the Act the listing and trading of Inverse Fund Shares that seek to provide investment results, before fees and expenses, in an amount that exceeds −300% of the percentage performance of the underlying benchmark index. Specifically, with respect to the listing and trading of Inverse Fund Shares that seek to provide investment results, before fees and expenses, in an amount that exceeds −300% of the percentage performance of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to section 19(b)(2) of the Act.[7]

Availability of Information About Fund Shares and Underlying Indexes

The Exchange also proposes to adopt new Commentary .04 to NYSE Arca Equities Rule 5.2(j)(3), which would only apply to a series of Multiple Fund Shares and Inverse Fund Shares issued by an open-end management investment company. Proposed Commentary .04 to NYSE Arca Equities Rule 5.2(j)(3) would require the composition of portfolio holdings of a fund be disclosed daily on

[4] Fixed Income Securities are debt securities that are notes, bonds, debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal securities, trust preferred securities, supranational debt, and debt of a foreign country or a subdivision thereof. *See* Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

[5] Rule 19b–4(e) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to Rule 19b–4(c)(1) under the Act, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. *See* 17 CFR 240.19b–4(e)(1). A new derivative securities product means any type of option, warrant, hybrid securities product, or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. *See* 17 CFR 240.19b–4(e).

[6] *See* Commentaries .02 and .03 to NYSE Arca Equities Rule 5.2(j)(3) (currently prohibiting the Exchange from approving for listing and trading pursuant to Rule 19b–4(e) a series of ICUs that are issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified index by a specified multiple or that correspond to the inverse of the performance of a specified index by a specified multiple).

[7] 15 U.S.C. 78s(b)(2).

its Internet Web site and to include, as applicable: (1) The identity and number of shares held of each specific equity security; (2) the identity and amount held of each specific Fixed Income Security; (3) the specific types of financial instruments, which include, but are not limited to, stock index futures contracts, options on futures contracts, options on securities and indices, equity caps, collars, and floors, swap agreements, forward contracts, and repurchase agreements (collectively, ''Financial Instruments''), as well as the characteristics of such Financial Instruments; and (4) the cash equivalents and amount of cash held in such portfolio.

The Exchange states that this public Web site disclosure of the portfolio composition of a fund would coincide with the disclosure of the ''IIV File'' [8] and the ''PCF File.'' [9] Therefore, the same portfolio information (including accrued expenses and dividends) would be provided on the public Web site, as well as in the IIV File and PCF File provided to ''Authorized Participants.'' [10] The Exchange further states that the format of the public Web site disclosure and the IIV File and PCF File could differ because the public Web site will list all portfolio holdings, while the IIV File and PCF File would similarly provide the portfolio holdings, but in a format appropriate for Authorized Participants, *i.e.*, the exact components of a Creation Unit. Accordingly, investors would have access to the current portfolio composition of a fund through the fund's Web site.

Trading Halts

The Exchange states that existing trading halt requirements for ICUs would apply to Multiple Fund Shares and Inverse Fund Shares. In particular, NYSE Arca Equities Rule 5.5(g)(2)(b) provides that, if the intraday indicative value (''IIV'') or the index value applicable to that series of ICUs is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the index value occurs. If the interruption to the dissemination of the IIV or the index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.[11]

In addition, proposed Commentary .04(b) to NYSE Arca Equities Rule 5.2(j)(3) requires the Exchange to halt trading of Fund Shares if the Exchange becomes aware that the net asset value (''NAV'') is not being disseminated to all market participants at the same time or the daily public Web site disclosure of its portfolio holdings does not occur. Proposed Commentary .04(b) to NYSE Arca Equities Rule 5.2(j)(3) further provides that the Exchange may resume trading in such Fund Shares only when the NAV is disseminated to all market participants at the same time or the daily public Web site disclosure of portfolio holdings occurs, as appropriate.

In addition to other factors that may be relevant, the Exchange states that it may consider factors in exercising its discretion to halt or suspend trading in Multiple Fund Shares and/or Inverse Fund Shares. These factors would include, without limitation, (1) the extent to which trading is not occurring in securities comprising an underlying index and/or the Financial Instruments relating to the Fund Shares, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[12] In the case of Financial Instruments, the Exchange represents that a notification procedure would be implemented so that timely notice from the investment adviser is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the investment adviser would be made by phone, facsimile, or e-mail. The Exchange would then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Multiple Fund Shares and/or Inverse Fund Shares, as applicable. Trading in Multiple Fund Shares and/or Inverse Fund Shares would also be halted if the circuit breaker parameters pursuant to NYSE Arca Equities 7.12 are reached.[13]

Continued Listing and Trading Criteria

The Exchange states that the continued listing and trading requirements for ICUs set forth in NYSE Arca Equities Rule 5.5(g)(2) would apply to Multiple Fund Shares and Inverse Fund Shares.

Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts) provides that an ETP Holder, before recommending a transaction in ICUs, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

Prior to the commencement of trading, the Exchange would inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin. Specifically, ETP Holders would be reminded in the Information Bulletin that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in Multiple Fund Shares and Inverse Fund Shares. In connection with the suitability obligation, the Information Circular would also provide that members must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax

[8] Because the National Securities Clearing Corporation's (''NSCC'') system for the receipt and dissemination to its participants of the portfolio composition file (''PCF File'') is not currently capable of processing information with respect to Financial Instruments, an ''IIV File'' has been developed, which is used to disclose a fund's holdings of Financial Instruments. The IIV File is posted to a password-protected Web site before the opening of business on each business day, and all NSCC participants and the Exchange have access to a password and the Web site containing the IIV File.

[9] The PCF File for a fund includes the list of names and the required number of shares of each deposit security, as well as any cash information to be included in the next trading day's ''Creation Unit'' (the minimum aggregation size of shares required to effect a creation or redemption of shares). The information in the PCF File will be available to all participating in the NSCC system.

[10] Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are exempt from registration as broker-dealers to engage in securities transactions, who are Depository Trust Company participants.

[11] If a series of ICUs are traded on the Exchange pursuant to unlisted trading privileges, the Exchange would halt trading if the primary listing market halts trading in such series. *See* NYSE Arca Equities Rule 7.34(a).

[12] *See* NYSE Arca Equities Rule 5.5(g)(2)(b).

[13] *See id.*

status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of section 6 of the Act [14] and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules 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.

The Commission believes that the proposal reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in section 6(b)(5) of the Act. The Commission notes that it has previously approved the listing and trading of various leveraged exchange-traded funds, including trading pursuant to unlisted trading privileges on the Exchange, that seek daily investment results, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (−200%) of the underlying index.[17] The Commission also notes that the proposed rule change is similar to another exchange's generic listing requirements for Multiple Fund Shares and Inverse Fund Shares.[18] With respect to the listing and trading of a series of Inverse Fund Shares that seek to provide investment results that exceed −300% of the percentage performance of an underlying benchmark index, the Commission further notes that the Exchange would be required to obtain prior Commission approval pursuant to section 19(b)(2) of the Act.

The Commission also notes that Fund Shares must comply with all of the applicable provisions under NYSE Arca Equities Rules 5.2(j)(3), as proposed to be amended, and 5.5(g)(2), as well as all other requirements applicable to ICUs including, without limitation, requirements relating to the dissemination of intraday indicative value, index value, disclosure of portfolio holdings, rules and policies governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.

The Commission further notes that the proposed rule change is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Proposed Commentary .04 to NYSE Arca Equities Rule 5.2(j)(3) requires daily public Web site disclosure of the composition of a fund's portfolio holdings, including the identities and amount of securities comprising the underlying benchmark index, the specific types and characteristics of Financial Instruments, and any cash and cash equivalents held in such portfolio. With respect to such Financial Instruments, the Commission notes that a notification procedure will be implemented by the Exchange so that timely notice from the investment adviser is submitted to the Exchange if a particular Financial Instrument is in default or is shortly to be in default. The Exchange states that, after receipt of such notice, it would determine on a case-by-case basis whether such default justifies a trading halt of Multiple Fund Shares or Inverse Fund Shares, as the case may be. The Commission also notes that the Exchange would be required to halt trading in Multiple Fund Shares and Inverse Fund Shares if certain values are not disseminated as required or cease to be disseminated to all market participants at the same time.[19]

In addition, the Commission notes that NYSE Arca Equities Rule 9.2(a), which sets forth the Exchange's suitability requirements, would apply to the trading of Multiple Fund Shares and Inverse Fund Shares. Specifically, ETP Holders, before recommending a transaction to a non-institutional customer in such securities, must have reasonable grounds to believe that the recommendation is suitable for the customer, based on facts disclosed by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information that such ETP Holder believes would be useful to make a recommendation. ETP Holders must also have a reasonable basis to believe that the customer can evaluate the special characteristics, and is able to bear the financial risks, of investments in Multiple Fund Shares and Inverse Fund Shares. An Information Bulletin would inform ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) prior to the commencement of trading in such securities.

In sum, the Commission believes that the Exchange's proposed amendments to Commentaries .01, .02, and .03, and adoption of new Commentary .04, to NYSE Arca Equities Rule 5.2(j)(3) relating to the listing and trading of Multiple Fund Shares and Inverse Fund Shares should fulfill the intended objective of Rule 19b–4(e) under the Act by allowing such derivative securities products to be listed and traded without separate Commission approval. The Commission believes that the proposed rule change should facilitate the listing and trading of additional types of exchange-traded products and reduce the time frame for bringing these

[14] 15 U.S.C. 78f.

[15] 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).

[16] 15 U.S.C. 78f(b)(5).

[17] *See, e.g.*, Securities Exchange Act Release Nos. 56713 (October 29, 2007), 72 FR 61915 (November 1, 2007) (SR–Amex–2007–74) (approving the listing and trading of Rydex Leveraged Funds, Inverse Funds and Leveraged Inverse Funds); 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–Amex–2004–62) (approving the listing and trading of the ProShares Ultra Funds and Short Funds); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR–Amex–2006–41) (approving the listing and trading of the ProShares UltraShort Funds); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR–Amex–2006–101) (approving the listing and trading of Ultra, Short and UltraShort Funds based on various indexes); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR–Amex–2007–60) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on various international indexes); and 56998 (December 19, 2007), 72 FR 73404 (December 27, 2007) (SR–Amex–2007–104) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on several fixed income indexes, among others). *See also, e.g.*, Securities Exchange Act Release Nos. 56763 (November 7, 2007), 72 FR 64103 (November 14, 2007) (SR–NYSEArca–2007–81) (approving UTP trading of shares of funds of Rydex ETF Trust); 56601 (October 2, 2007), 72 FR 57625 (October 10, 2007) (SR–NYSEArca–2007–79) (approving UTP trading of shares of eight funds of the ProShares Trust); 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR–NYSEArca–2006–87) (approving UTP trading of shares of 81 funds of the ProShares Trust); and 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR–PCX–2005–115) (approving UTP trading of shares of funds of the ProShares Trust).

[18] *See* Securities Exchange Act Release No. 57660 (April 14, 2008), 73 FR 21391 (April 21, 2008) (SR–Amex–2007–131) (approving generic listing standards for Multiple Fund Shares and generic listing standards for Inverse Fund Shares that correspond inversely up to −200% of the percentage performance of a particular underlying benchmark index).

[19] *See* proposed Commentary .04(b) to NYSE Arca Equities Rule 5.2(j)(3); NYSE Arca Equities Rule 5.5(g)(2).

securities to market, thereby reducing the burdens on issuers and other market participants and promoting competition.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and finds good cause for approving the proposed rule change.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSEArca–2008–89) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25505 Filed 10–24–08; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(1).

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11449 and #11450]

Indiana Disaster Number IN–00026

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Indiana (FEMA—1795—DR), dated 09/23/2008.

Incident: Severe Storms and Flooding.

Incident Period: 09/12/2008 through 10/06/2008.

Effective Date: 10/16/2008.

Physical Loan Application Deadline Date: 11/24/2008.

EIDL Loan Application Deadline Date: 06/23/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Indiana, dated 09/23/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Floyd, Perry, Scott, Washington.

Contiguous Counties: (Economic Injury Loans Only):

Kentucky: Breckinridge.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–25481 Filed 10–24–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11418 and #11419]

Louisiana Disaster Number LA–00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1786–DR), dated 09/02/2008.

Incident: Hurricane Gustav.

Incident Period: 09/01/2008 through 09/11/2008.

Effective Date: 10/16/2008.

Physical Loan Application Deadline Date: 11/03/2008.

EIDL Loan Application Deadline Date: 06/02/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Louisiana, dated 09/02/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Parishes: (Physical Damage and Economic Injury Loans): East Carroll, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll, Winn, Concordia.

Contiguous Parishes/Counties: (Economic Injury Loans Only):

Louisiana: Bienville, Claiborne, Jackson, Lincoln.

Arkansas: Ashley, Chicot, Union.

Mississippi: Adams, Claiborne, Issaquena, Jefferson, Warren.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–25484 Filed 10–24–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11409 and #11410]

Florida Disaster Number FL–00035

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–1785–DR), dated 08/26/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 through 09/12/2008.

Effective Date: 10/16/2008.

Physical Loan Application Deadline Date: 10/27/2008.

EIDL Loan Application Deadline Date: 05/26/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Florida, dated 08/26/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Bradford, Clay, Madison, Taylor.

Contiguous Counties: (Economic Injury Loans Only):

Florida: Dixie, Hamilton, Lafayette, Suwannee.

Georgia: Lowndes.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–25483 Filed 10–24–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11411]

Florida Disaster Number FL–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–1785–DR), dated 08/24/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 through 09/12/2008.

Effective Date: 10/16/2008.

Physical Loan Application Deadline Date: 10/23/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/25/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 08/24/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Charlotte.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–25478 Filed 10–24–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11487]

Indiana Disaster #IN–00027

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Indiana (FEMA–1795–DR), dated 09/23/2008.

Incident: Severe Storms and Flooding.

Incident Period: 09/12/2008 through 10/06/2008.

Effective Date: 09/23/2008.

Physical Loan Application Deadline Date: 11/24/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/23/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/23/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clark, Crawford, Dearborn, Fayette, Harrison, Jefferson, Jennings, Lake, Porter, Ripley, Scott, Switzerland, Washington, Wayne.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage and economic injury is 11487.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–25498 Filed 10–24–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11489]

Louisiana Disaster #LA–00024

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA–1792–DR), dated 09/13/2008.

Incident: Hurricane Ike.

Incident Period: 09/11/2008 and continuing.

Effective Date: 09/13/2008.

Physical Loan Application Deadline Date: 11/12/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/13/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parishes:

Acadia, Allen, Beauregard, Bienville, Calcasieu, Cameron, Concordia, De Soto, Iberia, Jefferson, Jefferson Davis, Lafourche, Plaquemines, Red River, Sabine, Saint Bernard, Saint Charles, Saint Mary, Saint Tammany, St. John the Baptist, Terrebonne, Union, Vermilion, Vernon.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage and economic injury is 11489.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–25499 Filed 10–24–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11488]

Texas Disaster #TX–00312

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–1791–DR), dated 09/13/2008.

Incident: Hurricane Ike.

Incident Period: 09/07/2008 through 10/02/2008.

Effective Date: 09/13/2008.

Physical Loan Application Deadline Date: 11/12/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/13/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Angelina, Aransas, Austin, Brazoria, Burleson, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Nueces, Orange, Polk, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Trinity, Tyler, Walker, Waller, Washington.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage and economic injury is 11488.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–25495 Filed 10–24–08; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a revision to an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, *Fax:* 202–395–6974m, *e-mail address: OIRA_Submission@omb.eop.gov.*

Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *e-mail address: OPLM.RCO@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. Therefore, your comments would be most helpful if you submit them to SSA within 60 days from the date of this publication. Individuals can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the e-mail address listed above.

1. *Application for Mother's or Father's Insurance Benefits—20 CFR 404.339–404.342, 20 CFR 404.601–404.603—0960–0003.* The Social Security Act provides for the payment of monthly benefits to the widow or widower of an insured individual if the surviving spouse is caring for the deceased worker's child who is entitled to Social Security benefits. SSA uses the information collected on Form SSA–5–F6 to entitle an individual to mother's or father's insurance benefits. The respondents are individuals applying for mother's or father's insurance benefits under the Old Age, Survivors, and Disability Insurance (OASDI) program.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 53,700.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Average Burden: 12,992 hours.

2. *Statement of Marital Relationship (By one of the parties)—20 CFR 404.726—0960–0038.* Where no formal marriage documentation exists, SSA uses information collected on Form SSA–754–F4 to determine whether an individual applying for spousal benefits meets the criteria of common-law marriage under State law. The respondents are applicants for spouse's Social Security or Supplemental Security Income (SSI) benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 15,000 hours.

3. *Public Information Campaign—0960–0544.* Periodically, SSA sends various public information materials, including public service announcements, news releases, and educational tapes, to public broadcasting systems so they can inform the public about various programs and activities conducted by SSA. SSA will frequently send follow-up business reply cards for these public information materials to obtain suggestions for improving them. The respondents are media sources (*e.g.*, broadcast television and radio media sources) who have received public information campaign materials.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 6,000.

Frequency of Response: 2.

Average Burden Per Response: 1 minute.

Estimated Annual Burden: 200 hours.

4. *Medical Source Statement of Ability To Do Work Related Activities (Physical and Mental)—20 CFR 404.1512–404.1513, 404.912–404.913, 404.1517, 416.917—0960–0662.* SSA uses the Forms HA–1151 and HA–1152

to collect data that is required to determine the residual functional capacity (RFC) of individuals who are appealing denied claims for benefits based on disability. The RFC of an individual must be determined in cases where SSA cannot make a determination on a claim for benefits based on current work activity or on medical facts alone. The respondents are medical sources paid by SSA to provide reports either based on existing medical evidence or on consultative examinations conducted for the purposes of the report.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10,000.

Frequency of Response: 20.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 50,000 hours.

II. SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the above listed address.

1. *Marriage Certification—20 CFR 404.725—0960–0009.* SSA uses Form SSA–3 to collect information to determine if the spouse claimant has the necessary relationship to the number holder (*i.e.*, the worker) to qualify for OASDI benefits. The respondents are applicants for spouse's OASDI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 180,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 15,000 hours.

2. *Claimant's Work Background—20 CFR 404.1565(b), 20 CFR 416.965(b)—0960–0300.* Form HA–4633 collects information SSA needs to assess an individual's degree of disability within the meaning of the Social Security Act (the Act). SSA uses the information in cases where an individual requests a hearing before an administrative law judge (ALJ) on the issue of disability. The completed HA–4633 provides an updated summary of the individual's relevant work history. The ALJ requires this information in assessing the claimant's degree of disability within the meaning of the Act. The respondents are members of the public who have filed for disability benefits under Title II and/or Title XVI and have requested a hearing before an ALJ.

Note: SSA listed this information collection as an extension of an OMB-approved information collection in the 60-Day **Federal Register** Notice published on September 17, 2008; it is a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 151,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 37,750 hours.

3. *Letter to Landlord Requesting Rental Information—20 CFR 416.1130 (b)—0960–0454.* SSA collects information on Form SSA–L5061 to identify rental subsidy arrangements involving applicants for, and recipients of, SSI payments. SSA uses the information to determine an income value for these subsidies, eligibility for payments, and the correct amount payable. The respondents are landlords of SSI claimants.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8,167 hours.

Dated: October 21, 2008.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration

[FR Doc. E8–25531 Filed 10–24–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Outagamie County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement is being prepared for a proposed highway improvement project on State Trunk Highway 15 in Outagamie County, Wisconsin, to be conducted by the Wisconsin Department of Transportation. The Notice of Intent (NOI) was originally prepared in 2003 but was inadvertently overlooked for submittal to the **Federal Register** for publication. Environmental activities, including involvement of state and federal agencies and other stakeholders, proceeded since the initiation of the project in 2003. Over five years have passed, and the process is now at the final Environmental Impact Statement stage. FHWA acknowledges the oversight and has now begun activities to recover from the inadvertent omission. The Environmental process will be brought up to date and made compliant with the 2005 SAFETEA–LU Environmental Review process, including development of a coordination plan and impact assessment methodologies. In the event other items in the process need to be updated to comply with SAFETEA-LU, the FHWA and the Wisconsin Department of Transportation will ensure those items are revised, as well.

FOR FURTHER INFORMATION CONTACT: Mark Chandler, FHWA, Suite 8000, 525 Junction Road, Madison, WI 53717; telephone: (608) 829–7514.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Wisconsin Department of Transportation (WisDOT) is preparing an Environmental Impact Statement on a proposed highway improvement project on STH 15 in Outagamie County, Wisconsin. The proposed improvements may consist of adding two lanes of roadway adjacent to the existing facility, constructing two lanes as a bypass of the Village of Hortonville, constructing four lanes on a new location, or a combination thereof.

The proposed project begins southeast of the City of New London, near the intersection of CTH D and the USH 45 Bypass of New London. Existing STH 15 travels approximately 10.5 miles southeast through the Village of Hortonville, with the end terminus west of the Town of Greenville, entirely in Outagamie County. The completion of such a proposed highway facility on STH 15 would implement the recommendations of the long-term corridor preservation study completed in 2001. The ''STH 15/USH 45 Corridor Preservation Report'' was completed in 2001 and documents the need for the STH 15 expansion. These recommendations include addressing the facility deficiencies, providing for additional capacity, accommodating local and through traffic, improving safety and operations, providing adequate regional mobility, allowing adequate access to current and future growth and development, and being capable of supporting a suburbanizing area.

The Wisconsin Department of Transportation has met with local public officials and has created a Local Advisory Committee to include as much local and public input as possible. This type of local coordination and public involvement assisted in the identification of alternatives to be evaluated in the EIS, and will aid in the eventual selection of a preferred alternative.

Public involvement will be solicited throughout this process. Public information meetings will be held during the project study. Public notice will be given as to the time and place of all workshops and public information meetings. All meetings and workshops will be held at accessible times and locations.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Additional information may be found on the project Web site at: *http://www.dot.wisconsin.gov/projects/d3/wis15/index.htm.* Comments and questions concerning the proposed action and the Environmental Impact Statement should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: October 21, 2008.

Mark Chandler,

Design and Environment Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. E8–25592 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in Washington State

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the proposed Interstate 90 (I–90) Snoqualmie Pass East Project, located between Hyak and Easton (Milepost 55.1 to 70.3) in the County of Kittitas, within the State of Washington. Those actions grant licenses, permits, and approvals for the project. The project will add one additional lane eastbound and westbound within a 15-mile section of I–90. Specific actions include acquiring additional easement and right-of-way, replacing the existing snowshed, replacing and adding new bridges and culverts, adding snow support structures (avalanche control), extending chain up/off areas, adding wildlife overcrossings, removing and placing fill, removing vegetations and trees, and providing stormwater treatment for both new and existing surfaces. The project also includes extensive mitigation and restoration actions which are compatible with land use plans.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before April 27, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Liana Liu, Area Engineer; Address: 711 S. Capitol Way, Suite 501, Olympia, WA; The Area Engineer's regular office hours are: Monday–Friday 8 a.m.–4:30 p.m.; Telephone: (360) 753–9553; e-mail address: *Liana.Liu@fhwa.dot.gov.* You may also contact Jason W. Smith, WSDOT I–90 Environmental Manager; Address: 1710 S. 24th Avenue, Yakima, WA 98902; Office Hours: Monday–Thursday 8 a.m.–4:30 p.m.; Telephone (509) 577–1921; e-mail address: *SmithJW@wsdot.wa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and NEPA approval for the I–90 Snoqualmie Pass East Project located in the State of Washington that is listed below. The first five miles of construction (beginning at MP 55.1) is funded and constructing the remaining 10 miles of the project is dependent upon the availability of future funding.

The action by the Federal agencies on a project, and the laws under which such action were taken, are described in the Final Environmental Impact Statement (EIS) issued in connection with the project, and in other project records. The Final EIS and Record of Decision (ROD), and other project records for the listed project are available by contacting the FHWA or the WSDOT at the addresses provided above. The Final EIS and ROD documents also can be viewed and downloaded electronically, or viewed at the following public libraries, as specified below.

I–90 Snoqualmie Pass East Project Web site address: *http://www.wsdot.wa.gov/projects/I90/SnoqualmiePassEast.*

Area public libraries:

- Washington State Library
- Seattle Public Library (downtown branch)
- King County Libraries (Bellevue Regional, Issaquah, Lake Hills, Newport Way, and North Bend)
- Ellensburg Library
- Cle Elum Library
- Central Washington University Library

This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

General: National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

Air: Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Organic Act of 1897 [16 U.S.C. 473 *et seq.*], National Forest Management Act of 1976 [16 U.S.C.].

Wildlife: Endangered Species Act [16 U.S.C. 1531–1544]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].

Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1377

(Section 404, Section 401, Section 319); Land and Water Conservation Fund [16 U.S.C. 4601–4604]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [PL 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

Final actions taken under: NEPA Final EIS issuance and Record of Decision by FHWA; Biological Opinion issued by United States Fish and Wildlife Service on August 29, 2008.

FHWA NEPA documents: Final EIS published August 29, 2008 and Record of Decision issued October 6, 2008. These documents are available from the agency contacts, WSDOT Web site or libraries identified above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 21, 2008.

Liana Liu,

Area Engineer, Olympia, WA.

[FR Doc. E8–25497 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Request for Emergency Processing of Collection of Information by the Office of Management and Budget

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: FRA hereby gives notice that it is seeking emergency approval processing from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) for the information collection request (ICR) listed below. FRA requests that OMB authorize the collection of information identified below on or before October 31, 2008, for a period of 180 days after the date of issuance of this notice in the **Federal Register**. On October 7, 2008, in response to the September 12, 2008, Chatsworth, California, collision of a Union Pacific (UP) freight train and a Metrolink commuter train, which resulted in the deaths of 25 people and numerous injuries, as well as other recent accidents/incidents involving cell phone use and use of electronic/electrical devices, FRA published in the **Federal Register** Emergency Order No. 26 (E.O. 26) (*see* 73 FR 58702) restricting on-duty railroad operating employees' use of cell phones and other distracting electronic and electronic devices. Because E.O. 26 goes into effect on October 27, 2008, and because E.O. 26 imposes information collection requirements that must be fulfilled by the nation's railroads, FRA is seeking emergency approval for the proposed collection of information to enforce compliance with E.O. 26 and to ensure the safety of affected railroad employees and the general public during train operations throughout the United States.

DATES: Comments must be received no later than November 3, 2008.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130—New'' and the title of the proposed collection of information. Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov*, or to Ms. Jackson at *nakia.jackson@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Below is a brief summary of the currently approved information collection activities that FRA is submitting for clearance by OMB:

OMB Control Number: 2130—New.

Title: FRA Emergency Order No. 26, Notice No. 1.

Type of Request: Emergency approval.

Affected Public: Businesses.

Form Number(s): N/A.

Abstract: Emergency Order No. 26—and its associated collection of information—is FRA's direct and proactive response to the September 12, 2008, Chatsworth, California, collision of a Union Pacific (UP) freight train and a Metrolink commuter train, which resulted in the deaths of 25 people and numerous injuries to train occupants, as well as to other train accidents/incidents involving cell phone use and use of electronic/electrical devices that have occurred throughout the country recently. The collection of information under Emergency Order No. 26 is aimed at ensuring that railroads revise their programs of operational tests and inspections, as necessary, to include the requirements of E.O. 26 and specifically include a minimum number of operational tests and inspections; and at ensuring railroads instruct each of their operating employees and supervisors of railroad operating employees concerning the requirements of E.O. 26 and implementing railroad rules and instructions. The collection of information under E.O. 26 also contains a provision that allows railroads to petition for relief from this Order by adopting other means of ensuring that railroad operating employees are not

distracted from their duties by use of electronic or electrical devices or by implementing technology that will prevent inappropriate acts and omissions from resulting in injury to persons.

REPORTING BURDEN

Emergency order item No. 26	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
(1) Revision of Railroad's Program of Operational Tests and Inspections.	687 Railroads	687 amended programs	1 hour	687 hours
Under 49 CFR 217 to Include Requirements of E.O. 26.	20 New Railroads	20 amended programs	1 hour	20 hours
(2) Employee Training in Requirements of E.O. 26 and Implementing Railroad Rules and Instructions.	130,000 RR Employees	130,000 Trained Employees.	15 minutes	32,500 hours
(3) Petitions of Relief from E.O. 26	687 Railroads	Zero (0) Petitions	Zero (0) minutes/hours	Zero (0) hours

Form Number(s): N/A.

Respondent Universe: 685 Railroads; 100,000 Railroad Employees.

Frequency of Submission: One-time; On occasion.

Total Responses: 130,707.

Total Annual Estimated Burden: 33,207 hours.

Status: Emergency Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on *October 21, 2008.*

Kimberly Orben,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E8–25480 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

International Standards on the Transport of Dangerous Goods; Public Meeting—Correction Notice

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Notice of public meetings: Correction.

SUMMARY: A notice published Friday, October 12, 2008 (FR Volume 73, Number 202, Pages 61930–61931) cited an incorrect date for PHMSA's public meeting in preparation for the 34th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) during which PHMSA is also soliciting comments relative to potential new work items which may be considered for inclusion in its international agenda, and comments relative to a potential future rulemaking action regarding the use and applicability of international standards. The correct date for the UNSCOE TDG public meeting is Wednesday, November 19, 2008.

In addition, the notice cited an incorrect date relative to a separate public meeting in preparation for the 16th Session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCOE GHS). The correct date for the LTNSCOE GHS public meeting is Tuesday, November 18, 2008.

Essential information regarding these meetings is reproduced below. For more details on the issues to be considered at each meeting, please refer to the original notice (see *http://edocket.accessgpp.gov08/df/E8–24718.pdf*).

Corrected Information Regarding the UNSCOE TDG Meeting

Date: Wednesday, November 19, 2008; 8 a.m.–11 a.m.

Address: DOT Headquarters, West Building, Oklahoma City Conference Room, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Duane Pfund, Director, Office of International Standards or Mr. Shane Kelley, International Transportation Specialist, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

Corrected Information Regarding the UNSCOE GHS Meeting

Date: Tuesday, November 18, 2008; 10 a.m.–12 p.m.

Address: The UNSCOE GHS meeting will take place at the Environmental Protection Agency Potomac Yard One facility, Bellavista Conference Room (11100, 11th Floor), 2777 S. Crystal Drive, Arlington, VA 22202. To facilitate entry, please have a picture ID available and/or a U.S. Government building pass if applicable.

FOR FURTHER INFORMATION CONTACT: Kristen Hendricks, Field and External Affairs Division, Office of Pesticide Programs ((703) 308–0308, *hendricks.kristen@epa.gov*) or Dorothy Semazzi, Field and External Affairs Division, Office of Pesticide Programs ((703) 347–8540, *semazzi.dorothy@epa.gov*).

Theodore L. Willke,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. E8–25482 Filed 10–24–08; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Trinity Universal Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 3 to the Treasury Department Circular 570, 2008 Revision, published July 1, 2008, at 73 FR 37644.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

Trinity Universal Insurance Company (NAIC # 19887). Business Address: P.O. Box 655028, Dallas, TX 75265–

5028. Phone: (904) 245–5600. Underwriting Limitation b/: $114,542,000. Surety Licenses c/: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, MT, NE, NM, OH, OK, OR, TN, TX, UT, WA, WI, WY. Incorporated in: Texas.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2008 Revision, to reflect this update.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: October 17, 2008.

Vivian L. Cooper,

Director, Financial Accounting and Services Division.

[FR Doc. E8–25365 Filed 10–24–08; 8:45 am]

BILLING CODE 4810–35–M

DEPARMENT OF VETERANS AFFAIRS

Advisory Committee on Gulf War Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Gulf War Veterans will hold a meeting on November 19–20, 2008. On November 19, the meeting will be in Room 2A104 at the VA Medical Center, 10 North Greene Street, Baltimore, MD, from 10 a.m. until 4:30 p.m. On November 20, the meeting will be at the St. Regis Hotel, 16th and K Streets, NW., Washington, DC, from 9 a.m. until 4:30 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and recommendations to the Secretary of Veterans Affairs on issues that are unique to veterans who served in the Southwest Asia theater of operations during the 1990–1991 period of the Gulf War.

On November 19, the Committee will meet with the officials from the State of Maryland Office of Veterans Affairs to discuss veteran outreach. The Director of the Depleted Uranium Program at the Baltimore VA Medical Center will discuss VA's research in depleted uranium and how it relates to the health effects in Gulf War veterans. Additionally, the Committee will meet with a panel of Gulf War veterans who reside in the Baltimore area. Gulf War veterans living in the Baltimore area who served in the Southwest Asia theater of operations during 1990–1991 wishing to participate in the panel should contact Lelia Jackson at (202) 461–5758 or via e-mail at *lelia.jackson@va.gov.*

On November 20, a representative from the Research Advisory Committee on Gulf War Veterans' Illnesses will discuss its recently released report. Subject matter experts from the Veterans Health Administration will discuss Post Traumatic Stress Disorder and Military Sexual Trauma in women veterans, and research specifically related to veterans and family members of veterans who served in the Southwest Asia theater of operations of the Gulf War from 1990–1991.

Public comments will be received on November 19, from 1 p.m. until 1:30 p.m. and on November 20, from 11:15 a.m. until 11:45 a.m. Individuals wishing to speak must register not later than November 14 by contacting Ms. Jackson and by submitting 1–2 page summary of their comments for inclusion in the official record. Public comments will be limited to five minutes each. A sign-in sheet will be available each day. Members of the public may also submit written statements for the Committee's review to the Advisory Committee on Gulf War Veterans, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420.

Interested parties may also listen in by teleconferencing into the meeting. The toll-free teleconference line will be open from 10 a.m. until 4:30 p.m. on November 19 and from 9 a.m. until 5 p.m. on November 20. To register for the teleconference, contact Ms. Jackson.

Any member of the public seeking additional information should contact Laura O'Shea, Designated Federal Officer, at (202) 461–5765.

Dated: October 21, 2008.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–25556 Filed 10–24–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Genomic Medicine Program Advisory Committee will meet on November 20, 2008 at the Almas Conference Center, Oasis Room, 1315 K Street, NW., Washington, DC. The meeting will convene at 8 a.m. and adjourn at 5 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care of veterans and to enhance development of tests and treatments for diseases particularly relevant to veterans.

The Committee will receive program updates including planned responses to recommendations, and will be asked to continue to provide insight into optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of veterans. The meeting focus will include discussions on resource development, including family history tool development and genomics research database for the genomic medicine program.

Members of the public may provide statements (limited to 5 minutes each) during the period reserved for public comments. They may also submit, at the time of the meeting, a 1–2 page summary of their comments for inclusion in the official meeting record. Any member of the public seeking additional information should contact Dr. Sumitra Muralidhar, Designated Federal Officer, at *sumitra.muralidhar@va.gov.*

Dated: October 21, 2008.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–25575 Filed 10–24–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date(s)	Location
Surgery	November 10, 2008	Embassy Suites—Chevy Chase.
Mental Hlth & Behav Sci-B	November 13, 2008	DoubleTree Hotel.
Immunology	November 14, 2008	Embassy Suites—Chevy Chase.
Hematology	November 14, 2008	Embassy Suites—Chevy Chase.
Cardiovascular Studies	November 17, 2008	Embassy Suites—Crystal City.
Cellular & Molecular Medicine	November 19, 2008	* VA Central Office.
Gastroenterology	November 20, 2008	The Westin Washington DC.
Respiration	November 21, 2008	The Westin Washington DC.
Mental Hlth & Behav Sci-A	November 24, 2008	St. Gregory Luxury Hotel & Suites.
Neurobiology-D	November 25, 2008	St. Gregory Luxury Hotel & Suites.
Endocrinology-B	December 1, 2008	St. Gregory Luxury Hotel & Suites.
Infectious Diseases-A	December 2, 2008	Embassy Suites—Chevy Chase.
Infectious Diseases-B	December 3, 2008	The Westin Washington DC.
Oncology	December 4–5, 2008	DoubleTree Hotel.
Neurobiology-A	December 5, 2008	* VA Central Office.
Nephrology	December 5, 2008	The Westin Washington DC.
Epidemiology	December 5, 2008	* VA Central Office.
Endocrinology-A	December 8, 2008	The Westin Washington DC.
Neurobiology-E	December 8, 2008	The Westin Washington DC.
Clinical Research Program	December 9, 2008	Embassy Suites—Crystal City.
Neurobiology-C	December 11–12, 2008	DoubleTree Hotel.

The addresses of the hotels and VA Central Office are:
DoubleTree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC.
Embassy Suites—Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC.
Embassy Suites—Crystal City, 1300 Jefferson Davis Highway, Arlington, VA.
St. Gregory Hotel, 2033 M Street, NW., Washington, DC.
VA Central Office, 1722 Eye Street, NW., Washington, DC.
The Westin Washington DC City Center Hotel, 1400 M Street, NW., Washington, DC.

* Teleconference.

The purpose of the Merit Review Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research protocols. During this portion of each subcommittee meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these subcommittee meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, PhD, Chief, Program Review (121F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 at (202) 461–1679.

Dated: October 20, 2008.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–25451 Filed 10–24–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Advisory Committee on Education will meet on November 12–13, 2008, at the Veterans of Foreign Wars Building, 200 Maryland Avenue, NE., Washington, DC. The November 12 session will be begin at 8 a.m. and end at 4:30 p.m. The November 13 session will begin at 8:30 a.m. and end at 12 noon. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of education and training programs for veterans, servicepersons, reservists, and dependents of veterans under Chapters 30, 32, 35, and 36 of title 38, and Chapter 1606 of title 10, United States Code.

The meeting will begin with opening remarks and a summary of recent activities by Mr. James Bombard, Committee Chair. The agenda for the meeting will include an overview of new legislation and an update on VA outreach efforts pertaining to educational assistance benefits and vocational rehabilitation and employment. On November 13, the Committee will review and summarize issues raised during the meeting.

Oral statements will be heard on November 12 at 4 p.m. and on November 13 at 11:30 a.m. Interested persons may submit written statements to the Committee before the meeting, or within 10 days after the meeting, by sending them to Mr. Salminio Garner, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Mr. Salminio Garner at (202) 461–9800.

Dated: October 21, 2008.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–25573 Filed 10–24–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
October 27, 2008

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 40

Mandatory Reliability Standard for Nuclear Plant Interface Coordination; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08–3–000; Order No. 716]

Mandatory Reliability Standard for Nuclear Plant Interface Coordination

Issued October 16, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act (FPA), the Commission approves the Nuclear Plant Interface Coordination Reliability Standard developed by the North American Electric Reliability Corporation (NERC). In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop a modification to the Reliability Standard to address a specific concern. The Reliability Standard requires a nuclear plant generator operator and its suppliers of back-up power and related transmission and/or distribution services to coordinate concerning nuclear licensing requirements for safe nuclear plant operation and shutdown and system operating limits. The Commission also approves four related definitions for addition to the NERC Glossary of Terms, and directs various changes to proposed violation risk factors, which measure the potential impact of violations of the Reliability Standard on the reliability of the Bulk-Power System.

DATES: *Effective Dates:* The final rule will become effective November 26, 2008.

FOR FURTHER INFORMATION CONTACT:

Robert Snow (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6716;

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Richard M. Wartchow (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8744;

Christy Walsh (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6523.

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

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission approves the Nuclear Plant Interface Coordination Reliability Standard (NUC–001–1) developed by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop a modification to the Reliability Standard to address a specific concern.[2] The Reliability Standard requires a nuclear plant generator operator and its suppliers of back-up power and transmission and/or distribution services to coordinate concerning nuclear licensing requirements for safe nuclear plant operation and shutdown and system operating limits (SOLs).[3]

[1] 16 U.S.C. 824o (2006).

[2] 16 U.S.C. 824o(d)(5).

[3] NERC proposes to define nuclear plant generator operator as any generator operator or generator owner that is a nuclear plant licensee responsible for operation of a nuclear facility licensed to produce commercial power. See the discussion of NERC's proposed Glossary terms below. The Reliability Standard itself defines those suppliers who provide such generation, transmission and distribution services pursuant to agreements under

The Commission also approves four related definitions for addition to the NERC Glossary of Terms,[4] and directs various changes to proposed violation risk factors, which measure the potential impact of violations of the Reliability Standard on the reliability of the Bulk-Power System.[5]

I. Background

A. Proposed Reliability Standard NUC–001–1

2. On November 19, 2007, NERC filed its petition for Commission approval of the Nuclear Plant Interface Coordination Reliability Standard, designated NUC–001–1 (November 19, 2007 Petition).[6] NERC supplemented the filing on December 11, 2007 (December 11, 2007 Supplement) to propose four related NERC Glossary terms: ''Nuclear Plant Generator Operator,'' ''Nuclear Plant Off-site Power Supply (Off-site Power),'' ''Nuclear Plant Licensing Requirements (NPLRs),'' and ''Nuclear Plant Interface Requirements (NPIRs).'' In the November 19, 2007 Petition, NERC stated that the proposed Reliability Standard addresses the coordination of interface requirements for two domains: (i) Bulk-Power System planning and operations and (ii) nuclear power plant licensing requirements for off-site power necessary to enable safe nuclear plant operation and shutdown.

3. Reliability Standard NUC–001–1 applies to nuclear plant generator operators and ''transmission entities.'' To account for the variations in nuclear plant design and grid interconnection characteristics, the Reliability Standard defines transmission entities as ''all entities that are responsible for providing services related to Nuclear Plant Interface Requirements (NPIRs)'' and lists eleven types of functional entities that could provide services related to NPIRs.[7]

4. In the November 19, 2007 Petition, NERC explained that nuclear plant generator operators and transmission entities operate according to separate, established reliability and safety procedures. To provide for coordination of these separate procedures, the ERO developed NUC–001–1 to require a nuclear plant generator operator to coordinate operations and planning with its transmission entities by developing procedures that reflect nuclear plant licensing requirements and SOLs,[8] including interconnection reliability operating limits (IROLs), affecting nuclear plant operations.[9] The Reliability Standard requires nuclear plant generator operators and transmission entities to develop expectations and procedures for coordinating operations to meet the nuclear plant licensing requirements, as well as SOLs and IROLs, and to develop agreements or arrangements, which may include mutually agreed upon procedures or protocols, reflecting those expectations and procedures. These agreements or arrangements are known as interface agreements. The resulting operations and planning requirements developed in the agreements to address the nuclear plant licensing requirements, SOLs and IROLs are called nuclear plant interface requirements or NPIRs.[10] NERC stated that Requirements R3 through R8, which state that the interface agreement parties will address the NPIRs in planning, operations, and facility upgrade and outage coordination, provide additional specificity on these expectations.

5. In the November 19, 2007 Petition, NERC noted that nuclear plant generator operators must already fulfill nuclear licensing requirements for off-site power.[11] NERC stated that, while various forms of agreements exist to meet the nuclear power plant general design criterion for off-site power, NUC–001–1 places a new, mandatory and enforceable obligation under section 215 of the FPA on both nuclear plant generator operators and transmission entities. NUC–001–1 requires these entities to inform one another of limits and requirements on their systems and to enter into agreements to coordinate and operate their systems to address nuclear plant licensing requirements and related system limits.

6. The nuclear plant licensing requirements addressed in the Reliability Standard include requirements for off-site power to enable safe operation and shutdown during an electric system or plant event and requirements for avoiding nuclear safety issues as a result of changes in electric system conditions during a disturbance, transient, or normal conditions. NERC cited general design criterion 17 for nuclear power plants, which requires nuclear plant generator operators to obtain off-site electric power that will provide sufficient capacity to permit safety systems to function, assure that reactor coolant design limits are not exceeded, prevent core cooling, and maintain containment integrity and other vital functions.

7. NERC stated that NUC–001–1, in combination with the nuclear license general design criteria requirements, achieves the vital public interest of assuring safe nuclear power generation. According to NERC, the Reliability Standard is beneficial to nuclear plant generator operators because it will assist them in meeting nuclear plant licensing requirements to safely produce nuclear power. It is also beneficial to Bulk-Power System users, due to the significant support that nuclear power plants provide to the Reliable Operation of the Bulk-Power System.

8. NERC requested that NUC–001–1 take effect in areas subject to the Commission's jurisdiction on the first day of the first full calendar quarter falling 15 months after Commission approval.

B. Proposed NERC Glossary Definitions

9. In the December 11, 2007 Supplement, NERC proposed to add the following four terms to the NERC Glossary:

NUC–001–1 as ''transmission entities,'' as discussed below.

[4] *See, e.g., Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, RM06–16–000, 72 FR 16416, FERC Stats. & Regs. ¶ 31,242, at P 1893 (Apr. 4, 2007), *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007) (approving the NERC Glossary of Terms Used in Reliability Standards (as revised) (Glossary) originally filed April 4, 2006).

[5] The Commission is not proposing any new or modified text to its regulations. Rather, as set forth in 18 CFR Part 40, a proposed Reliability Standard will not become effective until approved by the Commission, and the ERO must post on its Web site each effective Reliability Standard.

[6] NUC–001–1 is attached in Appendix A to the March 20 Notice of Proposed Rulemaking (NOPR) in this proceeding, and is available on the Commission's eLibrary document retrieval system in Docket No. RM08–3–000 and also on NERC's Web site, *http://www.nerc.com.* See 18 CFR Part 40, *Mandatory Reliability Standard for Nuclear Plant Interface Coordination,* NOPR, Docket No. RM08–3–000, 73 FR 16,586 (March 28, 2008), FERC Stats. and Regs. ¶ 32,629 (2008).

[7] The list of functional entities consists of transmission operators, transmission owners, transmission planners, transmission service providers, balancing authorities, reliability coordinators, planning authorities, distribution providers, load-serving entities, generator owners and generator operators. Applicability issues are addressed in a separate section, below.

[8] The NERC Glossary defines system operating limit or SOL as ''the value * * * that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria. * * *''

[9] The NERC Glossary defines IROL as a ''system operating limit that, if violated, could lead to instability, uncontrolled separation, or Cascading Outages that adversely impact the reliability of the bulk electric system.''

[10] *See* NUC–001–1, Requirement R2 and the proposed NERC Glossary term, Nuclear Plant Interface Requirements (NPIR).

[11] The Nuclear Regulatory Commission (NRC), which regulates facilities that are associated with reactor safety or emergency response at a nuclear generation plant, has regulatory requirements for offsite power systems, as provided in the NRC regulations, 10 CFR Part 50, Appendix A—General Design Criteria for Nuclear Power Plants, criterion 17.

Nuclear Plant Generator Operator: Any Generator Operator or Generator Owner that is a [n]uclear [p]lant [l]icensee responsible for operation of a nuclear facility licensed to produce commercial power.

Nuclear Plant Off-site Power Supply or *Off-site Power:* The electric power supply provided from the electric system to the nuclear power plant distribution system as required per the nuclear power plant license.

Nuclear Plant Licensing Requirements (NPLRs): Requirements included in the design basis of the nuclear plant and statutorily mandated for the operation of the plant, including nuclear power plant licensing requirements for: (1) Off-site power supply to enable safe shutdown of the plant during an electric system or plant event; and (2) Avoiding preventable challenges to nuclear safety as a result of an electric system disturbance, transient, or condition.

Nuclear Plant Interface Requirements (NPIRs): The requirements, based on NPLRs and Bulk Electric System requirements, that have been mutually agreed to by the Nuclear Plant Generator Operator and the applicable Transmission Entities.

C. Notice of Proposed Rulemaking

10. On March 20, 2008, the Commission issued a Notice of Proposed Rulemaking (NOPR), which proposed to approve Reliability Standard NUC–001–1 as mandatory and enforceable. In the NOPR, the Commission also raised a number of concerns and asked for clarification from the ERO and comments from the public. The Commission proposed to approve the NERC definitions and proposed revisions to the violation risk factors for NUC–001–1.

11. As described more fully below, the ERO and other interested parties provided comments in response to the NOPR. These comments are summarized and addressed in the discussion portion of this Final Rule.

D. Procedural Matters

12. The NOPR required that comments be filed within 30 days after publication in the **Federal Register**, or April 28, 2008. On April 16, 2008, the Commission granted a motion filed by EEI and NEI extending the comment date to May 13, 2008. Approximately 23 entities filed comments, including several late-filed comments. The Commission accepts these late filed comments. Appendix A provides a list of the commenters.

II. Discussion

13. In this Final Rule, the Commission approves Reliability Standard, NUC–001–1, effective as proposed by the ERO. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs the ERO to develop a modification to one provision, Requirement R9.3.5, to clarify the impact of the Requirement on two important operating procedures, in response to comments received. This Final Rule largely accepts the explanations and clarifications provided in the ERO's comments and addresses the positions raised by NERC and the other commenters on the specific issues raised in the NOPR. As proposed in the NOPR, this Final Rule does not take any action on the regional difference, because it applies outside of the United States and is not applicable to any facilities within the Commission's jurisdiction.[12] The Final Rule directs modifications to the violation risk factors for the Reliability Standard, as discussed below. Finally, the Final Rule approves the additional Glossary terms.

A. Approval of NUC–001–1

14. NERC and other commenters generally support the NOPR proposal to approve Reliability Standard NUC–001–1.[13] EEI, Ameren, Dominion, and Ontario IESO and Hydro One state that they support approval of the Reliability Standard as improving coordination between nuclear plant generator operators and transmission entities.

15. In contrast, CenterPoint Energy asserts that NUC–001–1 is flawed and unnecessary, arguing that it deals with contractual matters that should be addressed through a tariff or standard agreement, not a Reliability Standard, to ensure that nuclear plant generator operators do not receive unreasonable competitive advantages over other competitors.[14] CenterPoint Energy also states that the Commission should mitigate potential market power and transparency concerns created by the Reliability Standard in regions where an independent transmission operator is not the entity that performs interconnected operations with the nuclear plant generator operators.[15] CenterPoint Energy is concerned that a requirement in a NPIR could result in a change in transmission operations and cause significant reliability or market disruptions. According to CenterPoint Energy, this could be mitigated by a requirement that nuclear plant generator operators retain documentation ''whenever a nuclear plant operator effectively alters transmission operating decisions of the independent operator due to alleged NPIR concerns.'' [16]

16. National Grid emphasizes that NUC–001–1 is intended to address technical aspects of the interface between transmission entities and nuclear plant generator operators as opposed to the commercial aspects. According to National Grid, the proposed Reliability Standard obliges all responsible entities to work together on creating NPIRs suitable to each nuclear power plant, whether the service provided to the nuclear power plant is subject to federal or state jurisdiction. According to National Grid, execution of an interface agreement and subsequent compliance with NPIRs should not change the jurisdictional status of the services provided. National Grid also requests that the Commission direct the ERO and its Regional Entities to ensure that nuclear plant generator operators look to the proper transmission entities for the provision of NPIR-related services and that they bear incremental costs of NPIR compliance.

Commission Determination

17. Pursuant to section 215(d) of the FPA, the Commission approves Reliability Standard NUC–001–1 as mandatory and enforceable. The Commission finds that coordination of nuclear licensing requirements and grid operating limits through auditable interface agreements will ensure that an important resource is operated safely and reliably, while minimizing grid disturbances from separation of nuclear power plants from the grid, due to the loss or degradation of auxiliary power supply. Further, the Commission disagrees with CenterPoint Energy that the Reliability Standard is flawed and unnecessary. Nuclear power plants represent an important power resource and provide reliability support throughout the Bulk-Power System. Unlike other large units, nuclear power plants are subject to separate regulatory oversight that mandates stringent operating and auxiliary power requirements, which, if not met, require the plant to separate from the grid. We find that NUC–001–1 is an appropriate means to ensure that the particular requirements faced by nuclear power plants are met, maximizing the reliability support to be provided while minimizing the potential for grid disruption caused by separation.

18. CenterPoint Energy provides no evidence to support its claims that assertions by nuclear plant generator operators concerning NPIRs could be

[12] NERC proposes to adopt as a regional difference for Canada a separate definition of nuclear plant licensing requirements that does not reference regulatory requirements for off-site power supply for safe plant shutdown because Canada does not have regulatory standards for off-site power comparable to those established by the NRC.

[13] *See, e.g.*, Constellation, Detroit Edison, Dominion, EEI, Entergy, Exelon, Ontario IESO and Hydro One, Midwest ISO, and Ontario Power comments.

[14] CenterPoint Energy comments at 1.

[15] *Id.* at 3.

[16] *Id.* at 4.

used to affect grid or market operations. We note that the NRC oversees a nuclear power plant's development of and compliance with its licensing requirements related to facilities that are associated with reactor safety or emergency response through its regulatory proceedings. NUC–001–1 supplements NRC oversight of nuclear plant facilities by providing oversight of the transmission entities that operate facilities on the Bulk-Power System providing off-site power supply and delivery service to meet nuclear plant licensing requirements.

19. Neither National Grid nor CenterPoint Energy has provided any information on how the NPIRs could result in undue negative impact on competition. Because all jurisdictional tariffs have requirements for the provision of non-discriminatory service, the Commission does not anticipate that transmission entities would agree to NPIRs that do not provide for comparable service. While comparable service includes appropriate cost allocations, that subject is outside of the scope of this proceeding.[17] In regard to National Grid's non-cost-related comments, National Grid has not suggested any way in which the Reliability Standard could change the jurisdictional status of service provided to a nuclear plant generator operator, and therefore, we do not see a need to address this concern here.

B. Applicability

20. Reliability Standard NUC–001–1 applies to nuclear plant generator operators and transmission entities, such as off-site power suppliers and entities that provide distribution and transmission services that affect plant operations. NERC states that the Reliability Standard meets the criteria that it apply to users, owners and operators of the Bulk-Power System because it will apply to transmission entities, which are responsible for providing NPIR-related services. Therefore, these entities are subject to the Reliability Standard and may be registered pursuant to the NERC compliance registry process.

21. The Commission approves the applicability provisions of NUC–001–1 as appropriately identifying the applicable entities, while providing the flexibility to accommodate differing design criteria, grid configurations and services procured by the various nuclear power plants addressed. The Commission finds appropriate the ERO's use of the term transmission entities in NUC–001–1 to refer to the subset of registered entities that provide services to nuclear plant generator operators. Similarly, the term nuclear plant generator operators refers to the subset of generator owners and generator operators that are NRC licensees. While the Commission prefers that Reliability Standards apply to all entities within a functional category defined in the Registry Criteria, it has approved appropriate limitations incorporated into an applicability provision.[18] We address the specific questions raised by the Commission in the NOPR, as well as responses and comments, on an issue-by-issue basis below.

1. Notification of Parties to Interface Agreements

22. Requirement R1 of NUC–001–1 provides: ''[t]he Nuclear Plant Generator Operator shall provide the proposed NPIRs in writing to the applicable transmission entities and shall verify receipt.'' In the NOPR, the Commission indicates its understanding that Requirement R1 means that if a nuclear plant generator operator fails to provide all appropriate NPIRs to an applicable transmission entity, the operator will not be in compliance with the Reliability Standard.[19] Further, the Commission observed that a nuclear plant generator operator will know, as a result of the NRC licensing process, which applicable entities to contact and what services are needed to meet NRC requirements.

a. Comments

23. NERC and Entergy agree that it is unlikely that a nuclear plant generator operator would fail to obtain appropriate services and identify and contact transmission entities. They concur that a nuclear plant generator operator will know the applicable services it needs through the NRC licensing process. NERC explains that, as an NRC licensing requirement, the nuclear plant generator operator would have previously coordinated with transmission entities.

24. Entergy describes the NRC licensing process and explains that a nuclear plant generator operator will know the capability of its offsite power supplier to supply the power required during operations as well as situations that could result in a loss of off-site power. Entergy concludes that ''it is very unlikely'' that a nuclear plant generator operator would fail to contact the entities necessary to receive the appropriate services.

25. NEI agrees with the Commission's observation that nuclear plant generator operators are capable of identifying and contacting the appropriate transmission entities. However, NEI opposes any proposal to expand this notification requirement into an affirmative requirement that nuclear plant generator operators must ''obtain appropriate services'' from transmission entities. NEI requests that the Commission clarify that this is a notification requirement, not a requirement to obtain services (that, according to NEI, should not be included in the Reliability Standard).

26. According to NEI, the obligations of the nuclear plant generator operator to provide notice to transmission entities should be limited to those entities known or reasonably knowable by the nuclear plant generator operator, since the identity of some transmission entities could be proprietary. NEI argues that transmission entities that have been notified by the nuclear plant generator operator that they are responsible for providing services relating to NPIRs should then have the obligation to provide further notice to other applicable transmission entities that provide services to the first transmission entities.

27. ATC proposes replacing the phrase ''proposed NPIRs'' with a reference to nuclear plant licensing requirements including an explicit recognition of a transmission entity's ability to propose transmission system operating limits to be addressed as NPIRs in the interface agreement. According to ATC, this will remedy the current conundrum, where a nuclear power plant is obligated to ''propose NPIRs,'' while NPIRs are defined as having been agreed to by both parties.

b. Commission Determination

28. The Commission accepts NERC's proposal to require nuclear plant generator operators to identify entities that provide services related to off-site power supply or delivery. With NERC's and other industry representatives' assurances, the Commission is satisfied that the appropriate transmission entities can be identified based on the nuclear plant generator operators' historical compliance with NRC licensing requirements to obtain off-site

[17] *See* NERC November 19, 2007 Petition, Exhibit B, *Record of Proposed Reliability Standard Development*, ''Consideration of Comments, Draft 2 SAR on Nuclear Plant Offsite Power Reliability, May 23, 2005'' at 3 of 25 (agreeing that the Nuclear Reliability Standard does not address cost recovery issues).

[18] *See, e.g.,* MOD–010–0 (limiting applicability to members of NERC functional classes specified in the MOD–011–0, Requirement R1); and PRC–007–0 (limiting applicability to members of functional classes owning and operating an underfrequency load shedding program).

[19] NOPR at P 21.

power and develop solutions with grid operators to avoid service interruptions from foreseeable grid disturbances.

29. The Commission does not share the concern expressed by commenters that Requirement R1 imposes an affirmative obligation on a nuclear plant generator operator to obtain appropriate services. Requirement R1 obligates a nuclear plant generator operator to provide proposed NPIRs in writing to transmission entities. The nuclear plant generator operator is already obligated to obtain service to meet NPIRs that are based on nuclear plant licensing requirements enforced by the NRC. We note that Requirement R2 does contain an affirmative obligation that the nuclear plant generator operator and transmission entities develop and execute an interface agreement to implement NPIRs. With this understanding, we find that the nuclear plant generator operators' role in providing notice of proposed NPIRs to all applicable transmission entities is appropriate. A nuclear plant generator operator may be found in noncompliance for failing to provide notice to an entity responsible for providing services relating to its off-site power-related licensing requirements.

30. NERC and industry representatives clarify that the entities that the nuclear plant generator operator is to provide with proposed NPIRs are known to the nuclear plant generator operator based on the nuclear plant generator operator's historic need to obtain service to meet their license requirements. The Commission does not share NEI's concern that the nuclear plant generator operator may not know upstream utilities that provide service to the primary service providers. We note that Requirement R1 obligates a nuclear plant generator operator to contact entities that provide services to meet NPIRs, which are based on nuclear licensing requirements for off-site power supply and avoiding foreseeable grid disruptions. Any upstream service providers that provide services related to NPIRs must be identified by the nuclear plant generator operator in the NPIRs. Otherwise there is no obligation to identify non-primary service providers.

31. As for ATC's concern with the use of the phrase ''proposed NPIRs'' as opposed to a reference to nuclear plant licensing requirements that will form the basis for NPIRs, the Commission finds the current Requirements are sufficiently clear and flexible to accommodate counterproposals by transmission entities to address system limits during interface agreement development.[20]

2. Transmission Entities and Agreements on NPIRs

32. NUC–001–1 applies to nuclear plant generator operators and transmission entities. The Applicability section of the Reliability Standard (i) defines transmission entities as ''all entities that are responsible for providing services related to Nuclear Plant Interface Requirements (NPIRs),'' and (ii) lists 11 types of entities, identified in the NERC registry criteria based on the NERC Functional Model,[21] that may serve as transmission entities.

33. NERC explained in its November 19, 2007 Petition:

> Because the relationship of each nuclear plant generator operator with its provider of transmission-related services is unique, it will be important and necessary for the registration process to identify on a plant-by-plant basis the specific transmission entities required to identify NPIRs and develop the requisite agreement. Once the agreement becomes final, all applicable nuclear plant generator operator and transmission entities for each agreement will be identified by name and specific function. The respective Regional Entity will then be responsible for ensuring that each nuclear plant generator operator and transmission entities identified in the agreement(s) is registered on the NERC Compliance Registry for the applicable function(s). NERC will work with the Regional Entities to ensure that all nuclear plant generator operator and transmission entities included in the agreements that result from the NPIRs are listed in the Compliance Registry for this specific reliability standard.[22]

a. NOPR Proposals

34. In the NOPR, the Commission proposed to accept the identification and registration process described by NERC in the November 19, 2007 Petition with the understanding that NERC will use its authority under the compliance registry process to register all users, owners, and operators of the Bulk-Power System that provide transmission or generating services relating to off-site power supply or delivery.[23] Further, the Commission requested clarification from the ERO, as well as public comment, on three issues: (i) How NERC's plan to identify transmission entities on a ''plant-by-plant basis'' in the compliance registration process relates to the definition of bulk electric system; (ii) whether NUC–001–1 is enforceable against a transmission entity upon execution of an interface agreement or some earlier time; and (iii) how the Reliability Standard will be implemented for an entity that both operates a nuclear power plant and is responsible to provide services related to NPIRs.

i. Identification of Entities Subject to NUC–001–1 Through the Compliance Registry

(1) NOPR

35. As mentioned above, the Commission proposed in the NOPR to accept NERC's Applicability approach for NUC–001–1 with the understanding that NERC would use its authority under the compliance registry process to register all users, owners and operators of the Bulk-Power System that provide transmission or generating services relating to off-site power supply or delivery.[24] Further, the NOPR noted that certain auxiliary power suppliers and transmission service providers may serve nuclear power plants through facilities that fall outside the definition of bulk electric system. The NOPR stated that:

> The Commission understands that NERC and the Regional Entities will register these and other service providers that provide interconnection and/or auxiliary power facilities vital to nuclear plant operation through NERC's authority to register an owner or operator of an otherwise exempt facility that is needed for Bulk-Power System reliability, on a facility-by-facility basis. Once registered, the transmission entity providing such services to a nuclear generating plant may be subject to other Reliability Standards applicable to the functional class within the NERC functional model for which the transmission entity has been registered, as deemed appropriate through the registration process. With this understanding, the Commission proposes to accept the scope of the definition of transmission entities as appropriate.[25]

(2) Comments

36. NERC states that it concurs with the Commission's understanding that NERC will use its authority under the compliance registry process to register all users, owners and operators of the Bulk-Power System that provide transmission or generating services relating to off-site power supply or

[20] The Commission notes that ATC originally suggested the language ''proposed NPIRs'' as an alternative to the original draft language ''current'' NPIRs. NERC November 19, 2007 Petition, Exhibit B, ''Consideration of Comments on 1st Draft of Nuclear Plant Off-site Power Coordination Standard,'' at 15 of 69 (Aug. 15, 2006).

[21] NERC Statement of Compliance Registry Criteria (Revision 3), filed with its Supplemental Information Filing, Docket No. RM06–16–000 (Feb. 6, 2007), approved in Order No. 693 at P 92–96; NERC Functional Model, Version 3 (approved by NERC Board of Trustees, Feb. 13, 2007).

[22] NERC November 19, 2007 Petition at 12–13.

[23] *See id.* at 12.

[24] NOPR at P 25–26.

[25] *Id.* P 26 (footnotes omitted).

delivery. NERC will register the owner of an otherwise exempt facility on a facility-by-facility basis. Further, NERC agrees that, once registered, the transmission entity may be subject to other Reliability Standards applicable to the functional class within the NERC Functional Model, as deemed appropriate through the registration process, with an exception for low-voltage facilities, as discussed in section II(B)(2)(b) below.

37. EEI generally agrees with the Commission's conclusion that, once registered, a transmission entity providing services to a nuclear generating plant may be subject to other Reliability Standards applicable to the function for which the transmission entity has been registered. EEI also supports NERC's interpretation that identification as a transmission entity under NUC–001–1 Requirements should not change a party's obligations under other Reliability Standards.

38. NEI suggests that entities that are not currently subject to NERC registration, jurisdiction, and enforcement authority should be able to sign an interface agreement without submitting to NERC jurisdiction. NEI states that such an entity may be bound to comply with the interface agreement, but should not automatically be subject to all other NERC Reliability Standards and enforcement authority. NEI predicts that subjecting entities to NERC jurisdiction and enforcement authority will dissuade parties from signing interface agreements, contrary to the intent of this Reliability Standard. The applicability of the other Reliability Standards should be determined by the governing statute and regulations, and the terms of the other Reliability Standards, and should not be incorporated through this Reliability Standard. According to NEI, the Regional Entity registration process, not the execution of an interface agreement, determines whether an entity is subject to NUC–001–1. NEI asks the Commission to clarify that entities that sign an interface agreement are not automatically subject to NERC jurisdiction for Reliability Standards beyond NUC–001–1.

39. Southern suggests that it may not be appropriate to apply certain Reliability Standards requirements to nuclear plant generator operators, in particular those relating to ''functions of supplying energy and Interconnected Operations Services.'' On the other hand, entities registered as a generator owner or generator operator may fulfill the requirements set forth in NERC's definitions of these terms, but may not be licensed by the NRC and may not be ''responsible for operation of a nuclear facility.'' Southern asks the Commission to direct NERC to review the application of its registration requirements to nuclear plant generator operators.

40. Several commenters object to the use of the term transmission entities. Wisconsin Electric suggests that NUC–001–1 does not follow the NERC Functional Model, due to use of the term transmission entities. TVA makes a similar objection to the term nuclear plant generator operator, which does not appear in the NERC functional model, and suggests use of the term generator operators of nuclear plants with the Applicability section only listing generator operator. Southern suggests that, under the definition of nuclear plant generator operator, there may be licensees that do not meet the definition of a generator operator or generator owner, as nuclear plant generator operator is defined. According to Southern, some NRC licensees may be responsible for operating nuclear facilities but may not meet NERC's definitions of a generator owner or generator operator.

41. Constellation agrees that the nuclear plant generator operator must take the lead in identifying transmission entities, but urges the Commission to implement a dispute resolution process to assist the nuclear plant generator operators. Constellation is concerned that, under NUC–001–1, the nuclear plant generator operator will have the primary burden of ensuring that the parties enter into NPIR agreements; however, Constellation also argues that a transmission entity must be appropriately identified and have entered into an NPIR agreement before it is formally included in the NERC Compliance Registry.

(3) Commission Determination

42. The Commission accepts NERC's approach to determining applicable entities. The Commission agrees with the ERO that the identification of transmission entities, which may fit any one of 11 functional categories described in the NERC Functional Model, provides the ERO with needed breadth and flexibility in identifying and registering all users, owners and operators of the Bulk-Power System that provide services related to NPIRs.

43. Further, the ERO makes clear that, in implementation, it plans to register an owner or operator of an otherwise exempt facility that is needed for Bulk-Power System reliability, on a facility-by-facility basis. Once registered, a transmission entity may be subject to other applicable Reliability Standards, as deemed appropriate through the registration process. The Commission agrees that it is appropriate that a registered transmission entity comply with other applicable Reliability Standards for the functional category for which it is registered. This approach will support Bulk-Power System reliability and better assure that a transmission entity is capable of satisfying responsibilities set forth in an interface agreement.

44. NEI requests clarification that entities that sign an interface agreement are not automatically subject to ERO jurisdiction for Reliability Standards beyond NUC–001–1. As discussed above, the Commission agrees with the ERO that Reliability Standards beyond NUC–001–1 should apply to a newly-registered transmission entity, for the functional category for which it is registered. Further, we observe that the ERO indicates that it will make this determination ''as deemed appropriate through the registration process.'' We understand this to mean that the ERO has reserved some flexibility in determining which Reliability Standards are to be applied to a newly-registered transmission entity, and the ERO may consider individual circumstances in the process. The Commission agrees with NEI that the applicability of particular Reliability Standards beyond NUC–001–1 should not be decided in this proceeding. Rather, we leave it to the ERO to make such determinations in the first instance in the registration process.

45. Southern comments that it may not be appropriate to require nuclear plant generator operators to comply with certain Reliability Standards that apply to generator owners and generator operators. The Commission, however, is not convinced that a blanket waiver is warranted. Rather, similar to our explanation immediately above, the ERO may consider the individual circumstances of a generator owner or generator operator and determine whether, for example, a registered entity is needed for Bulk-Power System reliability and operates facilities that are addressed in a particular Reliability Standard.

46. Southern has not provided any specific examples of nuclear plant licensees that would not meet NERC's definition of nuclear plant generator operator. The Commission addresses NERC's registry determinations in appropriate proceedings on appeal. A registry proceeding may address whether a generator owner or operator meets the NERC registry criteria or should otherwise be registered based on a finding that the facility is material to Bulk-Power System reliability. We also

reject the concerns raised by Wisconsin Electric and TVA that the terms transmission entity and nuclear plant generator operator do not appear in the NERC Functional Model. While the NERC Functional Model is a useful guidance document, ''the Applicability section of a particular Reliability Standard should be the ultimate determinant of applicability of each Reliability Standard.'' [26] Moreover, the ERO's definition of transmission entity is linked to the functional categories set forth in the NERC Functional Model.[27] Likewise, the nuclear plant generator operator can simply be viewed as a sub-category of the generator operator function.

b. Applicability to Small Entities and Low Voltage Facilities

i. NOPR

47. In the NOPR, the Commission noted that some nuclear power plants may obtain auxiliary power through lower voltage facilities that are not included in a Regional Entity's definition of bulk electric system and that other nuclear power plants may retain alternate sources of auxiliary power provided through lower voltage facilities operated by a small utility or cooperative that is not included in a Regional Entity's definition of bulk electric system.[28] The Commission sought clarification from NERC on how it would register such entities and how this relates to the definition of bulk electric system.

ii. Comments

48. NERC clarifies that ''for lower voltage facilities that provide such services to a Nuclear Power Plant, the registration of those entities and the applicability of the NERC Reliability Standards therein to that functional class of entities will be limited to those facilities identified by the Nuclear Plant Generator Operator in its NPIRs.'' [29]

49. Constellation anticipates that some transmission entities, in particular those that are not previously registered, may be reluctant to enter into nuclear interface agreements. Constellation is concerned that small generators that are currently exempt from registration may be unwilling to continue to provide services or enter into new agreements for services if provision of such services causes them to be registered by NERC. Constellation cites the cost burdens and risk of penalties as having a chilling effect on these entities' willingness to continue to provide their discrete services to nuclear power plants. Constellation suggests that the curtailment of such services could impair the ability of nuclear plant generator operators to meet their license requirements. To address these concerns, Constellation requests that the Commission direct NERC to evaluate these risks and to propose mechanisms to ensure that small entities will not be deterred from providing services.

50. Entergy explains that under the NRC license requirements, a nuclear power plant is required to have two sources of off-site power. For one of Entergy's plants, one of those sources relies, at certain times, on reactive power support from a small hydropower facility that generates power at a distribution level voltage, and Entergy and the facility have entered into an agreement for that reactive power support. According to Entergy, this facility is not currently registered or part of the bulk electric system. Entergy expresses concern that if this entity becomes subject to NUC–001–1, it may cancel its current service agreement with Entergy because the risk of potential penalties and future compliance costs could be too high, thus jeopardizing Entergy's NRC license. Therefore, Entergy asks the Commission to clarify that if an entity does not currently qualify for inclusion on the NERC Compliance Registry, provision of NPIR-related services will not subject that entity to registration.

iii. Commission Determination

51. The Commission accepts NERC's clarification that registration of lower voltage facilities and the applicability of NUC–001–1 will be limited to those facilities identified by the nuclear plant generator operator in its NPIRs.[30] We would expect that any NPIRs agreed to between a nuclear plant generator operator and transmission entity would include all facilities needed to transmit offsite power and auxiliary power to the nuclear facility. The Commission remains sensitive to the need for NERC to register operators of lower-voltage facilities used to deliver off-site power.[31] The NOPR stated the Commission's understanding that NERC would register entities operating facilities not currently identified in the Regional Entities' definition of bulk electric system that are needed for Bulk-Power System reliability, through NERC's authority to register an owner or operator of an otherwise exempt facility that is needed for Bulk-Power System reliability, on a facility-by-facility basis.[32] We note that it is in the best interest of the nuclear plant generator operator to have any such facility identified in the NPIRs.

52. We find that NERC's approach should mitigate the concerns of commenters who speculate that small entities may wish to cease providing services rather than become subject to other Reliability Standards applicable to the functional class in which they would be registered. In this manner, application of the Reliability Standard to smaller entities operating lower voltage facilities that were not previously registered is limited to the facilities used to provide services to the nuclear plant generator operator. Commenters' other concerns largely address smaller entities' potential reluctance to continue providing service—that is, so long as these entities are users, owners or operators of the Bulk-Power System they may be registered by NERC and subject to the Reliability Standard. An entity that has failed to execute an interface agreement will be found in violation of the Reliability Standard.

53. We believe that limited registration of smaller entities, in combination with NERC's use of the registry process and tying enforceability to the receipt of a proposed NPIR (rather than execution of a formal agreement), should limit the majority of concerns raised by commenters on behalf of small entities. Entergy's concern with obtaining reactive power is mitigated by the fact that the Commission's policies recognize alternate sources for ancillary services—reactive power is a required ancillary service to be provided by transmission providers—and the Commission's policies also provide for merchant ancillary service sales where appropriate. However, these issues are best resolved in appropriate registration proceedings.

54. The Commission notes that in addition to smaller, previously unregistered entities, larger currently-registered entities may also provide service over lower voltage facilities that may be material to the reliability of the Bulk-Power System. These entities' lower-voltage facilities highlight a potential gap in applicability, because it could be argued that those facilities are

[26] Order No. 693 at P 127.

[27] *See* Reliability Standard NUC–001–1, Section A.4.2.

[28] NOPR at P 26.

[29] NERC comments at 8.

[30] This approach for lower voltage facilities is consistent with our determination in prior proceedings that the ERO may register an entity that falls below the minimum registry criteria on a facility-by-facility basis. *See* Order No. 693–A at P 38.

[31] *See* NOPR at P 22 and 26.

[32] *Id.* P 26 (citing Order No. 693–A at P 38; NERC Statement of Compliance Registry, Revision 3.1 at 8).

not currently subject to the Reliability Standards since they may fall outside a Regional Entity's definition of the bulk electric system. This potential gap is illustrated where a larger entity essentially provides a transmission service, but the applicability of NUC–001–1 and other Reliability Standards is uncertain, because service is provided over lower voltage facilities. We direct the ERO to review the impact on the Bulk-Power System for registration purposes of any entity providing service related to NPIRs over a lower-voltage facility similar to other facilities used to provide service, regardless of whether such service is provided by a currently-registered entity or a previously unregistered entity.[33]

c. Critical Facilities

i. NOPR

55. In the NOPR, the Commission asked whether NERC would, in registering entities not otherwise registered, consider lower voltage facilities needed to serve NPIRs to be critical facilities.

ii. Comments

56. NERC responded that it does not currently have an approved NERC Glossary definition for ''critical facility'' per Order No. 693's directive.[34] Consequently NERC states it will refrain from using the term in its response and until such time as the definition is developed and approved. However, NERC notes that a nuclear power plant would be unable to operate without transmission services from lower voltage facilities supplying off-site power, and the absence of such services would result in the real and reactive output of the plant being unavailable to the system. NERC states that the determination of whether a plant is material to the reliability of the Bulk-Power System is determined at the Regional Entity level, but notes that nuclear power plants typically provide both real and reactive power to the transmission grid.

57. SCE&G states that it finds the Commission's reference in the NOPR to ''critical facilities'' to be troubling, since NUC–001–1 should not affect the characterization of a facility as critical and such determination should be made by NERC. According to SCE&G, the existing NERC definition of ''critical asset,'' combined with the methodology in Reliability Standard CIP–002–1 is the correct method to determine if a facility is ''critical'' to the bulk electric system. SCE&G also maintains that NUC–001–1 does not affect the characterization of a critical facility, which is determined instead by the NERC definition of critical asset and the methodology provided in CIP–002–1.

iii. Commission Determination

58. The Commission notes that the term ''critical facility'' under Order No. 693 is a facility not otherwise included in a Regional Entity's definition of the bulk electric system but that has been identified by the Regional Entity as being critical to the system reliability.[35] This is different from the definition of ''critical asset'' under CIP–002–1. The Commission accepts NERC's explanation of whether it would consider lower voltage facilities needed to serve NPIRs to be critical facilities when it registers new entities and notes that the definition of the term ''critical facility'' will be resolved in a future proceeding.

d. Timing of NUC–001–1 Enforceability to Transmission Entities

i. NOPR

59. In the NOPR, the Commission sought comment on its understanding that NUC–001–1 would become applicable to, and enforceable against, a transmission entity only when the transmission entity executed an interface agreement. In other words, the provider of NPIR-related service would become a transmission entity, as that term is defined by NUC–001–1, subject to NUC–001–1 and other Reliability Standards, upon execution of the interface agreement.

ii. Comments

60. In response to the Commission's question on timing, NERC clarified that the interface agreement with a nuclear plant generator operator is not the mechanism that determines whether an entity is a transmission entity subject to NUC–001–1. Instead, a nuclear plant generator operator initiates the identification by proposing an NPIR to an applicable transmission entity, and, at this point, the identified transmission entity is placed on the Compliance Registry and becomes subject to the requirements of NUC–001–1, not when the agreement required in Requirement R2 is established.[36]

61. Several commenters support approaches similar to the NERC position.[37] These commenters generally agree that NUC–001–1 applies to a transmission entity once it has been notified of an NPIR by the nuclear plant generator operator. EEI, for instance, states its understanding that the NUC–001–1 drafting team and NERC staff intended that a nuclear plant generator operator would identify the transmission entities for each nuclear power plant under NUC–001–1, whether or not they had already entered into an agreement. NEI recommends that a potential transmission entity should be deemed a transmission entity subject to the requirements of NUC–001–1 once it becomes registered as a transmission entity under NUC–001–1 and receives proposed NPIRs from the nuclear plant generator operator pursuant to Requirement R1. NEI states that transmission entity status should continue unless and until NERC determines otherwise, based on a full and fair analysis of the facts and evidence presented by the affected parties.[38]

62. EEI states that, for a newly identified entity that is not on the Compliance Registry, the Regional Entities should examine whether an entity is properly classified as a transmission entity before registering the entity and thus requiring it to comply with the Reliability Standard. Entergy concurs that the NERC registration process, rather than the execution of an interface agreement, determines whether an entity is subject to NUC–001–1.

63. The commenters supporting the NERC clarification generally state that holding that NUC–001–1 is only applicable to a transmission entity after it executes an interface agreement would be inequitable because, in the event of disagreement, the nuclear plant generator operator could be held in violation, while the transmission owner would not.[39] NEI states that the need to prompt all potential transmission entities to conform to NUC–001–1 is particularly important where potential transmission entities have no corporate affiliation with the nuclear plant generator operator, because such an entity may wish to avoid executing an

[33] The Commission notes, however, that the NUC–001–1 drafting team has described such cases of distribution level supply as ''the exception, not the rule.'' *See* NERC Nuclear Reliability Standard drafting team, Consideration of Comments on 2nd Draft of Nuclear Off-site Power Supply Standard, at 54 (Feb. 7, 2007), filed in November 19, 2007 Petition, Exhibit B, Record of Development of Proposed Reliability Standard.

[34] Section III.d.2 of the NERC compliance registry states that the functions transmission owner and transmission operator shall include an entity ''that owns/operates a transmission element below 100 kV associated with a facility that is included on a critical facilities list that is defined by the Regional Entity.''

[35] Order No. 693 at P 77.

[36] NERC comments at 11.

[37] *See* EEI, Exelon, Detroit Edison, and NEI comments.

[38] *See also* Detroit Edison comments.

[39] *See* EEI, Exelon, and NEI comments; *See also* Constellation comments at 8.

interface agreement to avoid exposure to NUC–001–1.

64. EEI notes that, in some cases, the failure to agree may be the result of good-faith differences between the parties such that sanctions should not be imposed, except as a last resort. NEI also suggests that no enforcement action, other than arbitration through a Regional Entity, should be taken in the absence of agreement, but asks the Commission to clarify that while the Reliability Standard may not be enforceable by NERC or the Commission without an agreement, the contractual service commitments may be enforceable by other means. Constellation requests clarification that only Requirement R1 is enforceable against the nuclear plant generator operator until the NPIR agreement is executed, because the other requirements involve implementation of an agreement, which the nuclear plant generator operator cannot do unilaterally.

65. NEI emphasizes that licensing requirements should already be known to affected transmission entities and argues that existing procedures must remain in effect both prior to and after the effective date of the agreement under NUC–001–1. According to NEI, registration based on notification by the nuclear plant generator operator is appropriate because nuclear plant generator operators are in the best position to interpret nuclear plant licensing requirements and system needs affecting operations. According to NEI, NUC–001–1 should be enforceable against the transmission service providers whose commitments to provide services formed part of the basis for the original plant license regardless of whether an interface agreement has been executed. NEI suggests that Requirement R3 should be applicable regardless of the parties' compliance efforts to date.

66. According to NEI, the NRC requires each nuclear license applicant to perform stability studies for the transmission grid that delivers offsite power to the nuclear power plant and demonstrate that the loss of the largest operating unit on the grid would not result in loss of grid stability or affect the delivery of offsite power to the nuclear power plant.[40] NEI also notes that the types of studies performed and the conclusions are documented in the safety analysis report for each nuclear power plant. NEI suggests that nuclear plant licensees and transmission service providers are already obliged to provide assurances with respect to the capability and stability of offsite power sources for the nuclear plant.

67. In contrast, ConEdison, SCE&G, and ISO/RTO Council argue that NUC–001–1 should not be enforceable against transmission entities until an interface agreement is executed. According to ISO/RTO Council, representatives of NERC's functional classes become transmission entities by agreeing to meet an NPIR through an interface agreement. SCE&G questions whether it is appropriate to define as a transmission entity any entity that enters into an interface agreement with a nuclear plant generator operator. It asks the Commission to clarify the standards which will apply to every entity entering into an interface agreement.

iii. Commission Determination

68. Based on the ERO's and others' comments, the Commission does not adopt the understanding put forth in the NOPR. NERC and others have made clear that NUC–001–1 was intended to apply to transmission entities following receipt of notification from the nuclear plant generator operator, rather than after execution of the interface agreement. The applicability of NUC–001–1 is determined by the function performed by the entity—that is, an entity that provides services relating to a nuclear plant generator operator's nuclear plant licensing requirements is subject to NUC–001–1 on the latter of the effective date of the Reliability Standard or when a proposed NPIR is provided by the nuclear plant generator operator. This is consistent with other Reliability Standards where an entity is subject to a Reliability Standard based on the factual determination of whether it operates certain facilities or provides a certain service, not based on the consent of the entity.

69. We believe that this interpretation resolves the concerns of commenters who predict that entities supplying services to enable nuclear plant generator operators to meet nuclear plant licensing requirements would balk at executing an interface agreement if they become subject to NUC–001–1. This should not occur since transmission entities will be identified as providing services relating to NPIRs by a nuclear plant generator operator and will become subject to NUC–001–1 when they receive notice, not when they finalize an agreement.

e. Applicability in Integrated Systems

i. NOPR

70. In the NOPR, the Commission voiced its concerns regarding the implementation of NUC–001–1 in a situation where a single entity is both the nuclear plant generator operator and the transmission entity, such as a vertically-integrated utility. We sought comment on whether an agreement or arrangement would be required in such a case and, if so, what type of arrangement was required to comply with the Reliability Standard.

ii. Comments

71. In response, NERC states that NUC–001–1 may accommodate various industry structures and situations, including an integrated utility structure. According to NERC, NUC–001–1 requires appropriate agreements or arrangements to ensure that mutually agreed upon NPIRs are established. Because the necessary agreement or arrangement can include ''mutually agreed upon procedures or protocols'' per Footnote 1 of Requirement R2, they need not necessarily be in the form of a formally executed agreement between officers of separate companies. NERC notes that compliance measures M3 through M8 ensure that auditable documentation of such arrangements exist. NERC concludes that these requirements may be met by a single entity.

72. Most commenters addressing the issue concur that a formal signed contract between the departments of an integrated utility is not necessary.[41] However, Detroit Edison and Midwest ISO state that department or business unit representatives should execute an interface agreement or other evidence of participation to comply with NUC–001–1. Thus, these commenters propose that compliance could be demonstrated through agreements featuring varying degrees of formality. NEI argues instead that an integrated entity could set forth in writing the procedures to be followed by each unit as consistent with Requirement R2 and such internal documentation would be provided in an audit. SCE&G states that compliance may be achieved through internal coordination between the generation and transmission components of an integrated utility and, where appropriate, a formal agreement between an integrated utility and outside entities.

[40] NEI comments at 4 (citing Chapter 8 of the NRC Standard Review Plan (NUREG 0800)).

[41] *See* EEI, Entergy, Southern, NEI, and SCE&G comments.

iii. Commission Determination

73. The Commission accepts NERC's clarification that NUC–001–1 applies to nuclear plant generator operators and transmission entities where both parties are in a single integrated system. NERC clarified that a formal agreement is not necessary to have an agreement, procedures, or protocols in place that will comply with Requirement R2. Based on this clarification and industry comments, we accept NERC's conclusion that the Requirements of NUC–001–1 can be met by a single entity that is both the nuclear plant generator operator and the transmission entity. The Commission directs the ERO, in enforcing NUC–001–1, to require that an integrated entity provides documentation of its arrangements, including appropriate procedures and protocols, ensuring that its business units perform the functions under NUC–001–1 that would otherwise be met by separate entities. This will ensure that an integrated entity's compliance with NUC–001–1 is auditable in a manner comparable to other entities that are subject to the Reliability Standard.

3. Dispute Resolution

a. NOPR Proposal

74. In the NOPR, the Commission sought input on circumstances involving an off-site power supplier or other transmission entity that disagrees with a nuclear plant generator operator that it needs to execute an interface agreement. The Commission asked how NERC should resolve the impasse and whether NERC should propose to register the entity (if it was not already registered) without an executed interface agreement.

b. Comments

75. NERC states that, if a transmission entity and nuclear plant generator operator fail to agree to an NPIR, it may require mediation or arbitration of the dispute as part of a mitigation or remedial action strategy. If a nuclear plant generator operator and a transmission entity fail to reach agreement, NERC clarifies that it proposes to find each entity in non-compliance with Requirement R2. According to NERC, the nuclear plant generator operator and transmission entity would be subject to penalties, sanctions, mitigation, and remedial actions until agreement is reached. NERC notes that its March 4, 2008 submission of violation severity levels identified the failure to reach an agreement under Requirement R2 as a Severe violation severity level.

76. Several commenters support use of a dispute resolution process before NERC or a Regional Entity in the case of disagreement over NPIRs.[42] Dominion, ISO/RTO Council and Midwest ISO call for a formal dispute resolution process to resolve issues if parties cannot reach agreement. Constellation expresses concern that the nuclear plant generator operator would have the primary burden of ensuring the parties enter into NPIR agreements, based on the understanding reflected in the NOPR, and states that an early intervention process is essential for NERC and the Commission to provide assistance to parties facing difficulty reaching agreement. Constellation also asks that the Commission require NERC to establish and file within 60 days a proposed dispute resolution process to assist parties in reaching agreement. ISO/RTO Council requests the Commission to define a clear process with definitive criteria for resolving disputes between nuclear plant generator operators and transmission entities over the scope of the NPIRs.

77. Midwest ISO and National Grid express additional concerns over disagreement on individual NPIRs. Midwest ISO states that it is unclear what will occur if a named transmission entity disagrees that it has the role identified by the nuclear plant generator operator or if there is disagreement regarding the necessity for, or impacts of, the proposed NPIRs. Midwest ISO anticipates disputes among the various transmission entities and nuclear plant generator operators about which tariff, service agreement, or operating agreement provisions may be relied on to meet NUC–001–1 requirements.

78. Midwest ISO cites differing views as to the exact definition of NPIRs among nuclear plant generator operators and other stakeholders and therefore requests that the definition of NPIRs be clarified. National Grid states that disagreement should not forestall implementation of non-controversial NPIRs, but that it is nevertheless unclear whether NPIRs proposed by one side or the other shall have any force or effect while subject to a dispute resolution procedure.

79. NEI proposes that, if the parties were to fail to reach agreement on an interface agreement within 30 days, the Regional Entity could provide a dispute resolution mechanism. According to NEI, NERC could provide for subsequent appeals. However, NEI states that failure to enter into an interface agreement should not be considered a violation or failure to comply, as long as the parties are negotiating in good faith and following NERC's proposed dispute resolution and appeal processes.

c. Commission Determination

80. The Commission accepts the ERO's explanation of its registration and compliance options when parties fail to come to an agreement. Should parties fail to come to an agreement and thus find themselves in violation of the requirement that they have such an agreement in place, NERC states that it may require mediation or arbitration as a remedial action. We agree that ordering such dispute resolution processes may be an appropriate response in some instances in which there is no immediate risk to grid reliability and support NERC requiring the use of arbitration or mediation on a voluntary basis where appropriate.[43]

81. National Grid's concerns are speculative. However, if the parties cannot agree on proposed NPIRs, then NERC may require mediation or arbitration as a remedial action. We do not see the need at this time for NERC to develop formal arbitration procedures to govern all dispute resolution proceedings. The ERO has the discretion to adopt such procedures as are appropriate to the circumstances, in the event that the parties do not themselves propose acceptable procedures.[44]

82. We anticipate that Midwest ISO's concerns regarding NPIR negotiations should be resolved by the parties themselves. Given that the parties have already been able to agree to the services needed to meet NRC licensing requirements, the same parties should be able to successfully identify the services provided, confirm that they address NRC criteria for off-site power and system limits, and document such services in an auditable format consistent with the NUC–001–1 Requirements.

C. Form of Agreements

1. Comments

83. Several commenters request clarification that existing arrangements may be relied on to meet NUC–001–1 requirements to have an interface

[42] *See* ISO/RTO Council, Ontario Power, Midwest ISO, and NEI comments.

[43] Where there is an immediate reliability risk, we direct the ERO to take appropriate action to address the risk.

[44] Should NERC require the parties to engage in dispute resolution procedures as a remedial action or in lieu of, or along with, other sanctions upon a finding that the parties are in violation of the Reliability Standard, NERC must notify the Commission as it would for any imposition of a remedy to a violation. *See* NERC Rules of Procedure, section 408.1.

agreement in place to address NPIRs.[45] These commenters suggest that nuclear plant generator operators and transmission entities may rely on existing interface agreements and thus that NUC–001–1 does not require execution of a new agreement, and may incorporate by reference matters covered in other agreements or tariff provisions.

84. The ISO/RTO Council, in particular, asks the Commission to clarify that any entity designated as a transmission entity will be allowed to rely on existing tariffs and contracts to satisfy the mandates of Requirements R2 and R9 and will not be required to execute entirely new agreements that merely duplicate tariff and contractual arrangements that already are in place, allowing nuclear power plants to maintain compliance with existing NRC license criteria. ISO/RTO Council states:

> To the extent that an RTO or ISO—or indeed any other transmission operator—provides these services to generators, the services generally are reflected in existing tariffs and agreements between specific transmission operators and generators. For example, in New York, generators and [NYISO] execute a service agreement under the NYISO's Market Administration and Control Area Services Tariff (''Services Tariff''), which governs, among other things, the NYISO's ''provision of Control Area Services * * * including services related to ensuring the reliable operation of the NYS Power System.'' The service agreement requires the NYISO and its counterparties, including generators, to follow NYISO tariffs and procedures. The Services Tariff requires the NYISO to ''develop, and modify as appropriate, procedures for the * * * reliable operation of the NYCA in accordance with the terms and conditions of the Tariff.'' These procedures are set forth in detail in the NYISO manuals, and already cover the core elements of the agreements mandated pursuant to R9 of NUC–001–1. The technical requirements outlined in R9.2, including identification of system parameters and configurations and applicable limits, largely are reflected in the NYISO's Transmission and Dispatch Manual. The requirements outlined in R9.3 with respect to operations and maintenance coordination largely are reflected in the NYISO's Outage Scheduling manual. These manuals define the NYISO's obligations to specific generators, including nuclear generators, pursuant to the terms of the Services Tariff.[46]

85. According to ISO/RTO Council, new service agreements between transmission operators and nuclear plant generator operators under NUC–001–1 should also be incorporated into the applicable transmission operator tariffs or manuals. International Transmission requests clarification on whether parties will be expected already to have a signed agreement which meets the requirements of NUC–001–1 in place on the date on which the Reliability Standard becomes effective. Constellation requests confirmation that multi-party agreements will be accommodated.

86. EEI also requests that the Commission clarify that nuclear plant generator operators and transmission entities, affiliated and unaffiliated, do not need to enter into new agreements if an existing agreement between the parties is sufficient for compliance with NUC–001–1. National Grid states that NERC should provide additional guidance on what responsible entities must do to comply with the Reliability Standard within fifteen months of regulatory approval. National Grid characterizes NERC's position as proposing that parties establish an ''overall coordination platform'' to meet the NPIRs.

2. Commission Determination

87. Based on NERC's statement that parties may rely on less formal procedures and protocols, the Commission finds that NUC–001–1 does not dictate any particular format for the interface agreement. Nuclear plant generator operators and transmission entities may rely on pre-existing arrangements so long as the parties can document the fact that they have agreed that the pre-existing arrangements address all of the NPIRs, cover all required facilities and otherwise fulfill the requirements of NUC–001–1.[47] This includes multi-party agreements.

88. In response to ISO/RTO Council's request, we clarify that, as with any transmission entity, a regional service provider may rely on existing tariff provisions. However, the Commission understands that, in a region served by a regional service provider such as a regional transmission organization (RTO) or independent system operator (ISO), the regional authority will be required to meet NPIRs that require service over its system. Within the geographical boundaries of their service territory, potential transmission entities may also provide service over lower voltage facilities that are not covered by the RTO or ISO tariff. In such a case, we direct the ERO to assess whether the entity providing service over the lower voltage facilities is also subject to NUC–001–1, as discussed in section II(B)(2)(b), above, concerning Transmission Entities and Agreements on NPIRs. If such an entity is providing service that is not covered by the tariff, the nuclear plant generator operator would need to take steps to identify these entities as providing services related to an NPIR and thereby ensure compliance with NUC–001–1 on these lower-voltage facilities pursuant to our discussion in section II(B)(2)(b) above.

D. Enforcement and Conflicts With Other Regulations

1. Comments

89. Comments regarding the enforcement of NUC–001–1 addressed both potential conflicts with the Commission's standards of conduct rules, and potential conflicts with NRC requirements.

90. EEI requests clarification that the communications required to comply with NUC–001–1 are permitted under the Commission's standards of conduct rules. The Commission previously clarified that transmission providers may communicate with affiliated nuclear power plants regarding certain matters related to the safety and reliability of the transmission system and of the nuclear power plants in order to comply with requirements of the NRC. EEI asks the Commission to clarify that their provisions apply equally to unaffiliated entities that must comply with NUC–001–1 and that a transmission entity is not subject to enforcement under the standards of conduct, applicable tariff or other authority for providing information in compliance with NUC–001–1.[48]

91. NEI states that while the NUC–001–1 requirements are structured to help identify potential conflicts and coordinate their resolution through changes to the NPIRs, unforeseen situations could arise that are not adequately covered in the NPIRs and interface agreements under NUC–001–1. NEI argues that penalties should not be imposed if a nuclear plant generator operator fails to comply with a NUC–001–1 interface agreement or other Reliability Standard because the nuclear plant generator operator complied instead with NRC requirements. NEI recommends that NUC–001–1 be revised to recognize the primary obligation of nuclear plant generator operators to protect public health and safety through compliance with NRC regulations and the nuclear plant

[45] *See* Constellation, Dominion, and ISO/RTO Council comments.

[46] ISO/RTO Council comments at 4–5.

[47] Nuclear plant generator operators and transmission entities that choose to rely on generally-applicable tariffs should make provision to ensure that the tariff terms and conditions continue to meet the parties' needs should the tariff or nuclear licensing requirements change, and document such an arrangement.

[48] EEI comments at 9.

license, and proposes revised language.[49]

92. Similarly, Duke states that while it does not object to NUC–001–1, the Commission should clearly define the boundary between NRC nuclear safety requirements and Commission grid reliability requirements. According to Duke, because NRC licensing criteria address health and safety issues, those criteria should take precedence and a nuclear plant generator operator should not be penalized for non-compliance with a conflicting interface agreement or other Reliability Standard provision. Duke cites unforeseen circumstances as well as specific examples where NRC safety criteria may take precedence.[50] Also, Constellation requests assurance that, when there are overlapping requirements, registered entities will be subject to a single penalty only.

2. Commission Determination

93. In response to EEI's request for clarification that communications required to comply with this Reliability Standard are permitted under the Commission's standards of conduct regulations, the Commission notes that it is addressing this subject through its rulemaking on standards of conduct in Docket No. RM07–1–000.[51] A number of commenters in that docket sought clarification as to whether communications involving the Reliability Standards are exempt from standards of conduct prohibitions. The Final Rule to adopt revised standards of conduct, issued by the Commission, addresses the subject of exemptions.

94. Comments suggesting that mitigating circumstances may warrant waiver of penalties are beyond the scope of this proceeding and should be addressed in an appropriate enforcement proceeding. The Commission understands that the NPIRs are specifically identified to enable a nuclear plant generator operator to meet its NRC licensing requirements at all times. As such, there should be no question of priority of the NRC criteria and NUC–001–1 Requirements. As to Duke's examples, all of the existing Reliability Standards have a sound engineering basis and do not require exceeding defined power limits, identify priorities, and account for known interactions such as separation of any generating facility due to degraded grid voltage or frequency.

E. Scope of Agreements

1. NOPR

95. The NOPR noted that the Requirements of NUC–001–1 specify various contractual terms, including certain studies and procedures, to be addressed through interface agreements but do not describe specific substantive terms to be included in the agreements. In response, the NOPR expressed concern whether NUC–001–1 established an appropriate scope for the interface agreements. In its November 19, 2007 Petition, NERC stated that the NUC–001–1 drafting team adopted a consensus approach to coordinating nuclear power plant and transmission grid operations.[52] According to NERC, the consensus approach provides a platform for coordination at the interface that allows both nuclear plant generator operators and transmission entities to respect their main system drivers. Therefore, according to NERC, the NUC–001–1 drafting team adopted the interface agreement as a model for coordination and placed the obligation on nuclear plant generator operators and transmission entities to coordinate operational requirements by consensus.

96. In recognition of the successful working model of existing interface agreements, the NOPR proposed to accept NUC–001–1 and find appropriate the proposed level of detail defining substantive provisions to be included in interface agreements.

2. Commission Determination

97. The Commission generally finds the scope of the Nuclear Reliability Standard requirements adequate to address the development and implementation of interface agreements between nuclear plant generator operators and transmission entities, subject to the discussion of particular issues below.

a. Commission Questions

i. Interim Revisions

(1) NOPR

98. The NOPR proposed to approve the provisions for updating interface agreements, but requested comment on whether NUC–001–1 adequately provides for revisions to reflect interim changes.

(2) Comments

99. In response to the NOPR's inquiry whether NUC–001–1 includes sufficient provision for updates outside of the three-year review process, NERC states that it believes that the combination of Requirements R7, R8, R9.3.4, R9.4, and R9.4.1 adequately provides for the updating of NPIRs outside the three-year review window as circumstances warrant. Entergy concurs, asserting that NUC–001 adequately provides for interim updates to interface agreements. Southern states that it is feasible for interface agreements ''to provide for negotiation and amendments to address emerging transmission and generating system limits and revised nuclear plant licensing requirements prior to, or contemporaneously with, implementing operations solutions'' [53] to address permanent, but not temporary, changes. Southern indicates that amendment of the agreement would not be practical in temporary situations because an ''emerging'' system limit will be resolved within a relatively short period of time.

(3) Commission Determination

100. Based on the comments received, the Commission finds that NUC–001–1 makes adequate provision for interim updates. While not all system changes can be anticipated, the Commission expects that significant changes to the parties' operating relationship would be formalized and documented in an auditable format as interim changes in an addendum or revisions to the agreement, as appropriate.

b. Amendments to Operational Procedures

i. NOPR

101. The NOPR noted the Commission's preference that new operational procedures be reflected in the interface agreements prior to being implemented upon nuclear power plant start-up or reauthorization, or shortly thereafter. The Commission requested comment whether interface agreements

[49] NEI proposes that an additional paragraph be added to NUC–001–1 to address this potential conflict between the Commission and the NRC: ''FERC recognizes the necessity of nuclear plant generator operators to protect the public health and safety through compliance with NRC regulations and license obligations. A nuclear power generator operator's compliance with NPIRs is excused if necessary to comply with NRC regulations or license obligations. Notwithstanding any other provisions of FERC rules or regulations, any penalty that might be imposed arising from compliance by a nuclear plant generator operator arising from compliance with NRC regulations or license obligations shall not be imposed.'' NEI comments at 11.

[50] Duke proposed the following examples: (a) The inability of a nuclear generator to exceed its license power limits to respond to underfrequency events, (b) specific license requirements for support from the grid, such as priority off site power after a blackout, and (c) license-required separation in response to degraded grid voltage or frequency conditions.

[51] *Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, Docket No. RM07–1–000, 73 FR 16228 (Mar. 27, 2008), FERC Stats. and Regs. ¶ 32,630 (2008). *Revisions to the Standards of Conduct for Transmission Providers*, Final Rule, Docket No. RM07–1–000, 125 FERC ¶ 61,062 (2008).

[52] November 19, 2007 Petition at 26.

[53] Southern comments at 8–9.

could provide for negotiation and amendments to address emerging transmission and generating system limits and revised nuclear plant licensing requirements prior to, or contemporaneously with, implementing operations solutions.

ii. Comments

102. NEI states that NRC regulations include extensive requirements and processes for changes to nuclear power plants and their operations. Thus, NEI opposes a requirement to revise the interface agreement prior to making changes to a nuclear power plant or its operations. NEI suggests that implementation details to address changes in the grid configuration would be addressed in procedures, and should not require revisions to an interface agreement, while Requirements R7 and R8 require parties to review design changes to determine their impact on NPIRs.

103. Entergy responded that NPIRs are amended on a flexible time horizon under each individual interface agreement, and that this approach provides both entities with the flexibility to respond to emerging issues.

iii. Commission Determination

104. Based on the comments received, the Commission finds that NUC–001–1 makes adequate provision for updates to address changing transmission and generator limits or revised nuclear plant licensing requirements before operating solutions are implemented.

3. Other Scope Related Issues

a. Requirement R9.3.5

105. Commenters raise concerns regarding Requirement R9.3.5, which were not anticipated in the NOPR. According to NEI, Requirement R9.3.5 mixes two separate events incorporated in nuclear power plant design and license conditions: (i) Coping times for station blackouts and (ii) restoration of off-site power.[54] NEI explains that station blackouts include a loss of off-site power and select emergency alternating current (AC) power sources (generally on-site). In the case of such an event, NEI explains that the nuclear plant generator operator has responsibility to restore the emergency AC power sources within the demonstrated coping time. NEI states, however, that a transmission entity should assign off-site power restoration priority independent of coping time and that NERC should clarify Requirement R9.3.5 references to station blackout and off-site power restoration priority. Specifically, NEI recommends appending the requirement with the phrase ''to ensure restoration of Off-site Power is afforded priority reflecting that reliance on emergency AC power sources is not preferred.'' [55]

106. Southern states that the phrase ''coping times'' in Requirement R9.3.5 is ambiguous because the term has various meanings in the nuclear context and does not necessarily equate to a specific time period. Southern proposes the following alternative language for NERC consideration: ''Provision to consider the [nuclear plant licensing requirements] related to the coordination of grid and nuclear plant restoration following a nuclear plant loss of Off-site Power.'' [56]

i. Commission Determination

107. Based on the industry comments received, it appears that the references in Requirement R9.3.5 to coping times for station blackouts and restoration of off-site power are ambiguous—insofar as commenters suggest that the relationship between the two issues is not clear, and thus, is not adequately addressed as presented in Requirement R9.3.5. Therefore, we direct the ERO to modify Requirement 9.3.5 to clarify references to coping times and off-site power restoration to address the concerns raised in the comments through its Reliability Standards development process. This approach permits a full vetting of new suggestions raised by commenters in NOPR comments and encourages interested entities to participate in the ERO Reliability Standards development process rather than wait to express their views until a proposed new or modified Reliability Standard is filed with the Commission.[57] We agree with commenters that the provision is inartfully drafted and needs to be clarified; however, there does not appear to be any reason that parties to an interface agreement should not coordinate concerning both issues as an interim measure. The Commission directs NERC to develop a modification to Requirement R9.3.5, as discussed above. In addition, to ensure the matter is addressed expeditiously, we direct NERC to submit a timeline for developing and filing the modification as a compliance filing to be made within 30 days of the date of this Final Rule.

b. Personnel Training

108. International Transmission requests clarification whether Requirement R9.4.5 regarding personnel training applies to the transmission entity, the nuclear plant generator operator or both, and whether this requirement can be satisfied by existing training programs related to SOLs or IROLs. Midwest ISO requests that the Commission require the ERO to modify Requirement R9.3.6 to clearly provide that it only requires each entity to train its own operating personnel on the content of the applicable agreements, procedures and other documents related to NUC–001–1.

i. Commission Determination

109. The Commission clarifies that employees of nuclear plant generator operators and transmission entities should receive the training necessary to execute the terms of the interface agreement, and such training should be specified in the interface agreement between the parties. In addition, employees operating facilities used to provide services to meet NPIRs should be properly trained to Reliability Standard training requirements that apply to those facilities or the function served by the employees.

c. Planning

110. Midwest ISO proposes that the type of planning mandated by Requirement R9.2.3 should be more specifically defined. According to Midwest ISO, adherence to NUC–001–1 requires near real-time planning to support the NPIRs. Midwest ISO notes that other NERC Reliability Standards require mid-term and long-term planning.

i. Commission Determination

111. The Commission declines to address Midwest ISO's request to clarify the planning required under Requirement R9.2.3. Because NPIRs are based on NRC licensing requirements, the scope of planning mandated by Requirement R9.2.3 will largely be determined by the nuclear plant licensing requirements. As such, the determination is beyond the scope of this proceeding and is best resolved in the interface agreement development process between parties who are familiar with the facilities involved. In general, the Commission believes that the NPIRs needed to ensure the operation of nuclear power plants must

[54] Requirement R9 establishes a minimum set of elements to be addressed in interface agreements. Requirement R9.3.5 states that the operations and maintenance coordination elements should include ''Provision to consider nuclear plant coping times required by the nuclear plant licensing requirements and their relation to the coordination of grid and nuclear plant restoration following a nuclear plant loss of off-site power.'' *See also* TVA comments, Enclosure at 1.

[55] NEI comments at 11–12.

[56] Southern comments at 8.

[57] Order No. 693 at P 188.

be included in the planning process for all time frames as appropriate.

d. Requests for Limits on Scope of Interface Agreements

112. Several commenters request limits to the scope of nuclear plant licensing requirements and SOLs that may become the subject of NPIRs addressed in an interface agreement. CenterPoint Energy objects to Requirements R3 through R9 insofar as they do not limit the types of information or actions that are to be requested and provided. Dominion states that NUC–001–1 should not duplicate requirements that are already stipulated in other Commission-approved Reliability Standards.

113. Southern is concerned that the stated purpose of NUC–001–1, together with certain of its provisions, may impose operational requirements on a nuclear plant generator operator beyond those established in NRC licensing requirements.[58] According to Southern, the development and implementation of interface arrangements and any supplemental procedures should be left to the discretion and judgment of transmission entities and nuclear plant generator operators, operating within their respective regulatory frameworks. Southern recommends that the Commission direct NERC to amend the proposed Nuclear Reliability Standard, as appropriate, to avoid conflicts with NRC licensing requirements, and clarify that nothing in NUC–001–1 or the NOPR is intended to create any such conflict.

114. ConEdison also notes that transmission entities that provide services under the agreement should receive fair compensation. According to ConEdison, the requirements contained in the NOPR would require the various transmission entities provide additional services or a heightened level of services already provided to the nuclear plant generator operator.

i. Commission Determination

115. The Commission declines to direct the clarification proposed in the comments. We believe that these concerns expressed by the commenters are unfounded. Because NPIRs are based on NRC licensing requirements, the scope of procedures to be developed will largely be limited to procedures needed to address the nuclear plant licensing requirements. In addition, by agreement of the nuclear plant generator operator and transmission entities, parties will develop protocols and may make system improvements to address system limits that present preventable challenges to off-site power supply caused by grid disturbances. Thus, the basis for the NPIRs, and the terms of the interface agreements, is limited to what is needed to ensure reliable operation or safe shutdown of the nuclear power plant. Because the procedures embodied in NPIRs are developed by agreement of the parties, we do not share Southern's concern that additional operating requirements could be imposed on a nuclear plant generator operator.

116. As previously discussed, ConEdison's and others' arguments that transmission entities should receive compensation if they provide services relating to NPIRs are beyond the scope of this proceeding. These matters are appropriately left to the parties to the interface agreements to resolve.

F. Coordination

117. Requirements R7 and R8 require communication between nuclear plant generator operators and transmission entities regarding significant changes in design, configuration, operation, or limits of their facilities:

Requirement R7: Per the Agreements developed in accordance with this standard, the Nuclear Plant Generator Operator shall inform the applicable Transmission Entities of actual or proposed changes to nuclear plant design, configuration, operations, limits, protection systems, or capabilities that may impact the ability of the electric system to meet the NPIRs.

Requirement R8: Per the Agreements developed in accordance with this standard, the applicable Transmission Entities shall inform the Nuclear Plant Generator Operator of actual or proposed changes to electric system design, configuration, operations, limits, protection systems, or capabilities that may impact the ability of the electric system to meet the NPIRs.

118. In addition, Requirement R6 obligates interface agreement parties to coordinate outages and maintenance activities; Requirement R9.3.6 requires coordination of physical and cyber-security protections; and Requirement R9.3.7 requires coordination of special protection systems and load shedding. Thus, these Requirements provide for communication between a nuclear plant generator operator and its individual transmission entities, as well as the reverse for communication from the transmission entities to the nuclear plant generator operator.

1. Coordination Among Transmission Entities

a. NOPR Proposal

119. The NOPR expressed concern that NUC–001–1 Requirements do not explicitly provide for communication and coordination *among* the various transmission entities that is necessary to facilitate the provision of generation and transmission services to support the nuclear power plant operations. The NOPR stated the Commission's understanding that, historically, control area operators provided the necessary coordination and communication with neighboring entities, including RTO-type grid operators and other interconnected utilities and load serving entities, when necessary. The NOPR stated the Commission's expectation that the parties to nuclear plant interface agreements would continue to provide for coordination among transmission entities, pursuant to the Requirements of NUC–001–1, in particular the Requirement R9.3.1 obligation to provide for coordination of interface facilities in the interface agreement. Interface agreement parties may continue to designate former integrated control area operators when appropriate or may revise their approach, reflecting changes under restructuring to grid operations when necessary, consistent with coordination responsibilities provided for in existing Reliability Standards. Based on such an understanding, the NOPR proposed to accept the coordination provisions as requiring all appropriate coordination among transmission entities and requested comment.

b. Comments

120. NEI states that NUC–001–1 includes adequate coordination provisions, in particular through Requirement R9.4, together with the other Reliability Standards. NEI notes that transmission service providers have historically provided coordination and NUC–001–1 will not impose new burdens. Detroit Edison agrees that transmission entities should coordinate as necessary to ensure full compliance with NUC–001–1. According to Entergy, the proposed Nuclear Reliability Standard, in conjunction with other Reliability Standards, ensures that all necessary parties are involved in the interface agreements.

121. International Transmission notes that current practice under existing coordination agreements is to communicate when the transmission system is one event away from violating a SOL or IROL so that each party is advised of the possible effects on the other of responsive actions and the risks of a contingency. International Transmission states that clarification is needed on whether implementation of communication protocols established in the interface agreement will constitute compliance with NUC–001–1.

[58] *See also* National Grid comments.

International Transmission is concerned that the occurrence of a contingency would be treated as a violation of the NPIRs or NUC–001–1.

122. Southern is concerned that the NOPR's general description of certain coordination provisions [59] may be interpreted as requiring a nuclear plant generator operator to actually coordinate responses on the transmission system. According to Southern, the nuclear plant generator operator does not typically operate the system and, therefore, it would not be appropriate to require the nuclear plant generator operator to be responsible for coordination of responses on the transmission system. Southern states that such an interpretation would be inappropriate because it would go beyond the purpose of NUC–001–1 and the responsibilities of the respective parties. According to Southern, a transmission provider will respond to the issues listed because it actually operates the system. Therefore, the Commission should clarify that the standard does not require nuclear plant generator operators to coordinate responses on the transmission system.

123. NEI similarly objects to the Requirements that require interface agreements to provide for coordination of operational and maintenance issues. According to NEI, coordinating responses goes beyond the purpose of NUC–001–1 and the responsibilities of the respective parties. NEI suggests that rather than coordinating responses to unusual circumstances, it is more accurate to state that an interface agreement must include elements to address the operations and maintenance coordination of unusual conditions.

c. Commission Determination

124. The Commission confirms its understanding that coordination under the Reliability Standard includes coordination among transmission entities. No party objected to the Commission's interpretation that the coordination required under Requirement R9.3.1 includes designating an entity to coordinate among various transmission entities providing unbundled services, and that such a role had been previously filled by former control area operators. Therefore, we adopt that proposal.

125. International Transmission's request for clarification whether a contingency may be considered a violation of an NPIR raises issues concerning what level of service is adequate to meet the NPIRs addressed in an interface agreement. Furthermore, International Transmission has not stated how communication protocols, as presented in NUC–001–1, would imply that the occurrence of a contingency would violate NUC–001–1. Such issues are best resolved by those parties during the development of the agreement.

126. As for Southern's objection to the parties to an interface agreement coordinating responses to system events, we see nothing objectionable to the requirement that the parties to an interface agreement have procedures and protocols in place to respond to changing system conditions, consistent with nuclear license requirements and SOL procedures, as well as the remaining Reliability Standards. Nothing in the Reliability Standard or the NOPR description suggests that the nuclear plant generator operator is to be the party to coordinate transmission system responses.

127. Similarly, with respect to NEI's concern that the parties to an interface agreement be required to coordinate operational and maintenance issues where necessary, we conclude that a generator and a transmission system operator may agree to coordinate maintenance schedules in order to address system conditions, so long as the agreement is consistent, in this case, with the generator's license requirements, the Reliability Standards, and the standards of conduct.[60]

2. Addressing System Changes

128. Requirements R7 and R8 require parties to inform each other of design, configuration, operations, limits, protection systems, or capabilities that that may impact their ability to meet NPIRs.

a. Comments

129. Entergy asks the Commission to clarify the level of proposed change that would trigger a Requirement R7 and R8 information exchange. According to Entergy, proposals to change a plant's ''design, configuration, operations, limits, protection systems, or capabilities'' are evaluated routinely, due to the multitude of complex systems within a nuclear power plant, and the long lifetimes of such facilities. Entergy points out that the NRC has extensive general design criteria and requirements for changes.[61] Entergy notes that proposals may never be approved, scheduled, or implemented and suggests that transmission system and facility proposals may be subject to similar concerns.

130. Entergy notes the limitations in the Requirements that the proposed changes to be reported are those that ''may impact the ability of the electric system to meet the NPIRs,'' but claims that the description lacks clarity. Entergy suggests that nuclear plant generator operators and transmission entities will not be able to implement the Requirements without a determination of what changes to communicate and questions whether every discussion about a possible design change, technological improvement, or sale of facilities must be communicated. Entergy proposes that the Commission bypass agreement of the parties to an interface agreement and establish a limitation to include proposed changes that are formally approved, scheduled for implementation, and could significantly impact the ability of the Bulk-Power System to meet the NPIRs.

b. Commission Determination

131. The Commission declines to direct the clarification requested by Entergy. The Commission disagrees that the requirement to communicate changes that ''may impact the ability of the electric system to meet the NPIRs'' is not a clear requirement. It is an example of ''what'' is required, not ''how'' it should be performed which should be included in the agreements. The Commission believes that there are many plant-specific issues and does not expect they will be individually addressed in the Reliability Standard. However, it is clear what is required and the compliance audits will check that the entities have sufficiently covered them in their agreements.

G. Violation Risk Factors

132. As part of its compliance and enforcement program, NERC must assign a lower, medium or high violation risk factor to each *Requirement* of each mandatory Reliability Standard to associate a violation of the Requirement with its potential impact on the reliability of the Bulk-Power System. Violation risk factors are defined as follows:

High Risk Requirement: (a) Is a requirement that, if violated, could directly cause or contribute to Bulk-Power System instability, separation, or a cascading sequence of failures, or could place the Bulk-Power System at an unacceptable risk of instability, separation, or cascading failures; or (b) is a requirement in a planning time frame that, if violated, could, under emergency, abnormal, or restorative

[59] NOPR at P 14.

[60] *Standards of Conduct for Transmission Providers,* Notice of Proposed Rulemaking, Docket No. RM07–1–000, 73 FR 16228 (Mar. 27, 2008), FERC Stats. and Regs. ¶ 32,630 (2008). *Revisions to the Standards of Conduct for Transmission Providers*, Final Rule, Docket No. RM07–1–000, 125 FERC ¶ 61,062 (2008).

[61] *See* 10 CFR Part 50, Appendix B and 10 CFR 50.59.

conditions anticipated by the preparations, directly cause or contribute to Bulk-Power System instability, separation, or a cascading sequence of failures, or could place the Bulk-Power System at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to a normal condition.

Medium Risk Requirement: (a) Is a requirement that, if violated, could directly affect the electrical state or the capability of the Bulk-Power System, or the ability to effectively monitor and control the Bulk-Power System, but is unlikely to lead to Bulk-Power System instability, separation, or cascading failures; or (b) is a requirement in a planning time frame that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the Bulk-Power System, or the ability to effectively monitor, control, or restore the Bulk-Power System, but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to Bulk-Power System instability, separation, or cascading failures, nor to hinder restoration to a normal condition.

Lower Risk Requirement: Is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the Bulk-Power System, or the ability to effectively monitor and control the Bulk-Power System; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to affect the electrical state or capability of the Bulk-Power System, or the ability to effectively monitor, control, or restore the Bulk-Power System.[62]

133. In its November 19, 2007 Petition, NERC identified and proposed violation risk factors for each Requirement of Reliability Standard NUC–001.[63] The NOPR reviewed NERC's proposal consistent with the terms proposed in the Violation Risk Factor Order, in which the Commission addressed violation risk factors filed by NERC for Version 0 and Version 1 Reliability Standards.[64]

NOPR Proposal

134. In the NOPR, the Commission disagreed with NERC's suggestion that NUC–001–1 Requirements were primarily administrative in nature and proposed to direct the ERO to raise violation risk factors for several Requirements. The NOPR stated the Commission's general view that a Reliability Standard to ensure safe and reliable nuclear power plant operation and shutdown merits medium or high violation risk factors, rather than lower, due to the reliability benefits of nuclear power and the impact of separating a plant from the grid.

135. The NOPR noted that NUC–001–1 Requirements co-mingle administrative tasks with more critical requirements to ensure safe nuclear power plant operation and shutdown. These Requirements also provide for the safe and reliable operation of the grid, response to potential emergency conditions and implementation of procedures to address changing and emergency conditions. The NOPR sought comment on the Commission's proposals to raise violation risk factors for NUC–001–1, Requirements R2 (from lower to medium), R4, R5, R7, and R8 (medium to high), and R9 (lower to medium).

136. The NOPR also stated the Commission's understanding that NERC would apply the violation risk factor for the main Requirement to any violation of a sub-Requirement, unless separate violation risk factors are assigned to the Requirement and the sub-Requirement.

1. General Violation Risk Factor Issues

a. Comments

137. NERC and other commenters object to what they characterize as the general basis described in the NOPR for justifying changes to violation risk factors.[65] They object to the Commission's reliance on cited reliability benefits of nuclear power and the impact of separating a plant from the grid to justify raising the risk factors. NERC and EEI state that, despite the unique characteristics of nuclear power generation the reliability benefits of nuclear power and the impact of separation from the grid are not different from the reliability impacts of a large output fossil generating facility. EEI further states that these reliability concerns are addressed in other Reliability Standards that apply to all generators, regardless of fuel type.

138. Duke echoes these concerns, stating that violation risk factors (and violation severity levels) should establish penalty ranges that are proportionate to the potential impact of violations on the Bulk-Power System (medium or lower), but should not expose nuclear plant generator operators and transmission entities to extreme penalties simply because nuclear power plants are large units.

139. Ameren maintains that NUC–001–1 is administrative in nature, not operational and the Commission should not revise the violation risk factors.

140. Detroit Edison argues that the Commission's proposal to increase the violation risk factors undermines the integrity and value of the NERC Reliability Standards development process and states that the Commission has not justified its departure from the determinations reached through that process.[66] EEI similarly believes that any proposal to change violation risk factors or other aspects of Reliability Standards must be considered through NERC's ANSI-approved Reliability Standards development process.[67]

141. Constellation requests assurance that when there are overlapping requirements, registered entities will be subject to a single penalty only.

142. Finally, EEI comments that any proposal to change violation risk factors or other aspects of Reliability Standards must be considered through NERC's Reliability Standard development process. It points out that the Commission adopted this approach in Order No. 706, stating that ''where a directive for modification appears to be determinative of the outcome, the Commission provided guidance to the ERO standards development process but permitted consideration of an equivalent alternative approach that adequately addresses the Commission's underlying goal or concern 'as efficiently or effectively as the Commission proposal.'[68]

b. Commission Determination

143. The Commission declines to adopt the procedures proposed by the commenters. The Commission has previously determined that violation risk factors are not a part of the Reliability Standards.[69] NERC has had an opportunity to fully vet the NUC–001–1 violation risk factors through the Reliability Standards development process. The Commission believes that, for those violation risk factors that do not comport with the Commission's previously-articulated guidelines for analyzing violation risk factor

[62] *North American Electric Reliability Corp.*, 119 FERC ¶ 61,145, at P 9 (Violation Risk Factor Order), *order on reh'g*, 120 FERC ¶ 61,145 (2007) (Violation Risk Factor Rehearing Order).

[63] NERC proposes a lower violation risk factor for Requirements R1, R2 and R9 and a medium violation risk factor for Requirements R3 through R8.

[64] *See* Violation Risk Factor Order at P 19–36 (discussing five guidelines to evaluate the validity of each violation risk factor assignment).

[65] *See generally* Ameren, ATC, Detroit Edison, EEI, Entergy, Exelon, ISO/RTO Council, Ontario Power, Southern, and SCE&G comments.

[66] *See also* Ontario IESO and Hydro One, and SCE&G comments.

[67] Southern supports the EEI comments on violation risk factors. Ameren, Exelon, and Ontario Power support directing revisions through the Reliability Standards development process.

[68] EEI comments at 8.

[69] Violation Risk Factor Rehearing Order, 120 FERC ¶ 61,145 at P 11–16, *citing North American Reliability Corp.*, 118 FERC ¶ 61,030, at P 91, *order on clarification and reh'g*, 119 FERC ¶ 61,046 (2007).

designations, there is little benefit in once again allowing the Reliability Standards development process to reconsider a designation based on the Commission's concerns. Therefore, we will not allow NERC to reconsider the violation risk factor designations in this instance but, rather, direct below that NERC make specific modifications to its designations. NERC must submit a compliance filing with the revised violation risk factors no later than 90 days before the date the relevant Reliability Standard becomes enforceable.

144. That being said, NERC may choose the procedural vehicle to change the violation risk factors consistent with the Commission's directives. NERC may use the Reliability Standards development process, so long as it meets Commission-imposed deadlines.[70] In this instance, the Commission sees no vital reason to direct the ERO to use section 1403 of its Rules of Procedure to revise the violation risk factors discussed below, so long as the revised violation risk factors address the Commission's concerns and are filed no less than 90 days before the effective date of the relevant Reliability Standard.

145. Coordinating operations and planning between the nuclear power plant and its transmission entities serves two purposes; safety of the nuclear power plant and reliability of the Bulk-Power System. With regard to safety, the Blackout Report highlighted the importance of coordinated operations and planning between the Bulk-Power System and nuclear power plants, stating ''[a]s the design and operation of the electricity grid is taken into account when evaluating the safety analysis of nuclear power plants, changes to the electricity grid must be evaluated for the impact on plant safety.'' [71] With regard to reliability, since the NPIR supports many of the requirements necessary for the nuclear power plant to operate connected to the bulk electric system, not having an NPIR could result in the long-term outage of one or all nuclear power plants at a particular site to which the NPIR is applicable. This is relevant because the bulk electric system is not required to be planned to have multiple nuclear power plants out of service during peak load periods. As a result, the Commission disagrees with commenters that object to its reliance on the impact of a nuclear power plant separating from the grid to justify elevating violation risk factors for requirements of the Reliability Standard. While the Commission recognizes that the power produced from nuclear and non-nuclear power plants is the same, the conditions under which nuclear power plants can safely operate are inherently different than non-nuclear power plants because a nuclear power plant must meet all licensing requirements established by the NRC to remain connected to the grid.

146. The Commission is concerned that a lack of coordination of operations and planning between a nuclear power plant and its transmission entities with respect to the interface capabilities and requirements has the potential to result in both the unanticipated separation and the long term outage of one or all nuclear power plants at a site from the Bulk-Power System. The former has the potential to place the Bulk-Power System at risk for cascading outages while the latter may result in inadequate system capabilities to meet the projected firm load in either the planning or operating horizon. For example, once disconnected, before a nuclear power plant can reconnect to the Bulk-Power System, not only must Bulk-Power System conditions be suitable, but the nuclear power plant must also complete certain activities relevant to ensuring the safety of the plant to resume power production. Since nuclear power plants are typically designed as base load plants, the Commission is concerned that while the Bulk-Power System may typically be able to withstand the disconnection of a nuclear power plant for a reasonable period until such time Bulk-Power System conditions allow for reconnection and the nuclear power plant is permitted to reconnect, a prolonged disconnection of a nuclear power plant because its NPIRs are not satisfied may not be sustainable without affecting system capabilities, thus putting the Bulk-Power System at risk for instability, separation, or cascading outages.

147. The Commission also disagrees with arguments that elevated violation risk factors for Requirements of the Reliability Standard are not justified because the reliability concern of instability, separation, or cascading outages are already addressed in other Reliability Standards. The Commission agrees with commenters that, as required by other Reliability Standards, the Bulk-Power System is planned and operated such that there will not be any interruptions of firm transmission service after one event, such as the loss of a generator, nuclear fueled or otherwise.[72] However, the Commission has previously determined that it is not appropriate to mitigate perceived content issues among Reliability Standards, as suggested by commenters in this instance as the duplication of reliability objectives, through the violation risk factor assignment.[73] A violation risk factor represents the potential reliability risk a violation of a requirement presents to the Bulk-Power System. This assessed reliability risk is independent of, and not contingent upon, compliance with other Reliability Standard requirements. The Commission recognizes the complementary nature of some Reliability Standard Requirements and the fact that some requirements may share the same reliability objective. In fact, the Commission expects the assignment of a violation risk factor corresponding to requirements that address similar reliability goals in different Reliability Standards to be treated comparably.[74]

148. Commenters also argue that elevated violation risk factors are not justified because the proposed Reliability Standard is administrative in nature, not operational. The Commission disagrees. While the Commission recognized in the NOPR that many of the requirements of the Nuclear Reliability Standard are administrative in nature, these same requirements provide for the development of procedures to ensure the safe and reliable operation of the grid, and responses to potential emergency conditions.[75] As such, we disagree with arguments that the proposed standard focuses on nuclear safety through the administrative requirement of establishing agreements and not grid reliability.

149. Constellation's request for assurance that, when there are overlapping requirements, registered entities will be subject to a single penalty is a compliance issue and is thus best addressed on a case-by-case basis in the context of a compliance

[70] *See North American Electric Reliability Corp.*, 118 FERC ¶ 61,030, at P 91, *order on compliance*, 119 FERC ¶ 61,046, at P 33 (2007).

[71] *See* U.S.-Canada Power System Outage Task Force, *Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, at 129 (April 2004) (Blackout Report).

[72] *See* Order No. 693 at P 1794 (''[b]ased on the record before us, we believe that the transmission planning Reliability Standard should not allow an entity to plan for the loss of non-consequential load in the event of a single contingency''). The Commission recognized that load directly connected to a fault would be removed from service. *See also* TPL–001–000, Table 1, ''Transmission Planning Standards—Normal and Emergency Conditions.''

[73] *North American Electric Reliability Corp.,* 121 FERC ¶ 61,179, at P 16 (2007) (Order on Violation Risk Factor Compliance Filing).

[74] Violation Risk Factor Order, 119 FERC ¶ 61,145 at P 25.

[75] NOPR at P 51.

proceeding. We note that each instance of non-compliance with a Requirement is a separate violation. This is consistent with the FPA which establishes the statutory maximum penalty amount of $1 million on a per day, per violation basis as reflected in the order certifying NERC as the ERO.[76] However, the Commission approved NERC's Sanction Guidelines that allow NERC, in the context of a compliance proceeding, to use its discretion in the determination of monetary penalties for a violation of a Requirement of a Reliability Standard.[77]

150. EEI's argument that Order No. 706 requires changes to the violation risk factors to be considered through the Reliability Standards development process is flawed. The passages in Order No. 706 cited by EEI concern modification of the Reliability Standard itself. As the Commission has repeatedly held, the violation risk factors are not a part of the Reliability Standards. In fact, in Order No. 706, we stated that ''we will not allow NERC to reconsider the violation risk factor designations in this instance but, rather, direct below that NERC make specific modifications to its designations.'' [78] However, similar to our action in this order, Order No. 706 allowed NERC to choose the procedural vehicle to change the violation risk factors, so long as it meets Commission-imposed deadlines.[79]

2. Requirement-Specific Issues

a. Requirement R2

i. NOPR

151. The NOPR proposed to direct the ERO to raise the violation risk factor for Requirement R2 from lower to medium. The NOPR justified this proposal because the Requirement co-mingles the administrative element of having an executed agreement in place with the operational element of determining how the parties to the interface agreement will address nuclear plant licensing requirements and SOLs in order to provide for safe nuclear plant operation and shutdown. Thus, the operational requirements established will include requirements for off-site power to enable safe operation and shutdown during an electric system or plant event. Therefore, the NOPR noted that a violation of Requirement R2 ''could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the Bulk-Power System'' and found that a medium violation risk factor is appropriate.

ii. Comments

152. Ontario IESO and Hydro One and SCE&G disagree with the Commission that Requirement R2 has a direct impact on the electrical state or capability of the Bulk-Power System. They argue that, in the absence of an agreement, each party would continue to operate its own system in accordance with all applicable Reliability Standards.[80] Entergy and NEI argue that Requirement R2 is an administrative requirement, and state that violations can be quickly detected and corrected and will not directly affect the Bulk-Power System. Entergy also points out that Requirement R2 takes place in the planning timeframe and concludes that a lower violation risk factor is more appropriate.

iii. Commission Determination

153. The Commission adopts the NOPR proposal. As the Commission identified in the NOPR, Requirement R2 co-mingles the administrative element of having an executed agreement in place with the operational element of determining how the parties to the interface will address nuclear plant licensing requirements and SOLs. Consistent with violation risk factor guideline five, the Commission expects the assigned violation risk factor to reflect the highest reliability risk objective of the requirement.[81] A failure to establish operational and implementation elements of the NPIRs, the higher reliability risk objective of the requirement, has the potential under emergency, abnormal, or restorative conditions to directly affect the electrical state or capability of the Bulk-Power System.

154. Arguments that elevating a violation risk factor is not justified because Requirement R2 is an administrative requirement that takes place in the planning time frame, thus violations are quickly detected and corrected are fundamentally flawed.[82] NERC contemplates in its definitions of the violation risk factor levels, the reliability risk a requirement violation presents in both the operating and planning time frames. Consistent with NERC's definition, a violation risk factor represents the potential reliability risk a violation of a requirement presents to the Bulk-Power System, regardless of the time frame.

155. With regard to comments from Ontario IESO and Hydro One and SCE&G, as explained previously in this Final Rule, it is not appropriate to assign a requirement's violation risk factor based on compliance with other Reliability Standards.

156. Accordingly, the Commission directs the ERO to revise the violation risk factor assignment for Requirement R2 from lower to medium no later then 90 days before the effective date of the Reliability Standard.

b. Requirements R4.2 and R4.3

i. NOPR

157. The NOPR proposed to direct the ERO to raise the violation risk factors for sub-Requirements R4.2 and R4.3 to high. Sub-Requirements R4.2 and R4.3 require a transmission entity to incorporate NPIRs into operating analyses, operate to meet the NPIRs and inform the nuclear plant generator operator when the ability to assess performance to meet the NPIRs is lost.

158. The NOPR states that sub-Requirement R4.2 obligates a transmission entity to operate its electric system to meet NPIRs established in an interface agreement. Furthermore, NPIRs are described as forming the basis for nuclear plant generator operators and transmission entities to ''coordinate planning, assessment, analysis, and operation of the bulk power system to ensure safe nuclear plant operations and shutdowns.'' Therefore, the NOPR noted that, under emergency, abnormal, or restorative conditions, a violation of Requirement R4.2 could directly cause or contribute to Bulk-Power System instability, separation, or a cascading sequence of failures, or could place the Bulk-Power System at an unacceptable risk of instability, separation, or

[76] 16 U.S.C. 825o–1(b) (2006). *See also North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, at P 412 (Certification Order), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006).

[77] Section 3.10 of the NERC Sanction Guidelines states in part, ''NERC or the regional entity can determine and levy a separate penalty or sanction, or direct remedial action, upon a violator for each individual violator for each individual violation. However, in instances of multiple violations related to a single act or common incidence of noncompliance, NERC or the regional entity will generally determine and issue a single aggregate penalty, sanction, or remedial action directive bearing reasonable relationship to the aggregate of the related violations.''

[78] *Mandatory Reliability Standards for Critical Infrastructure Protection,* Docket No. RM06–22–000; Order No. 706, 73 FR 7368 (Feb. 7, 2008), 122 FERC ¶ 61,040, at P 757, *order on reh'g,* Order No. 706–A, 123 FERC ¶ 61,174 (2008).

[79] *Id.*

[80] Detroit Edison states that it agrees with Ontario IESO and Hydro One on specific violation risk factor issues, and Ontario Power and SCE&G also disagree with the Commission's proposals.

[81] Violation Risk Factor Order, 119 FERC ¶ 61,145 at P 32.

[82] *See* NEI comments at 8, and Entergy comments at 15.

cascading failures,[83] and proposed a high violation risk factor for Requirement R4.2.

159. The NOPR noted that Requirement R4.3 obligates a transmission entity to inform the nuclear plant generator operator when the ability to monitor the system and verify NPIRs is lost. The NOPR noted that a nuclear plant generator operator that is not aware that a transmission entity can no longer guarantee that NPIRs are met to respond to, would suffer an impaired ability to anticipate, emergencies and changing system conditions. Because such an event could increase the likelihood that the plant is separated from the transmission system and cause significant degradation in Bulk-Power System reliability, characterized by instability, uncontrolled islanding and cascading, the NOPR proposed to direct the ERO to raise the violation risk factor for Requirement R4.3 from medium to high, and requested comment.

ii. Comments

160. Several commenters object to the proposal to raise the violation risk factor of Requirement R4.2 and R4.3.[84] NEI characterizes Requirement R4.2 as requiring transmission entities to operate their electrical systems to meet the NPIRs incorporated in the interface agreements and describes Requirement R4.3 as requiring transmission entities which lose the ability to monitor their systems to maintain compliance with NPIRs to communicate this information to the affected nuclear plant generator operators. NEI, ConEdison, and Entergy state that the Commission's concerns regarding the loss of a single generator are addressed in other NERC Reliability Standards that minimize the risk of system instability, separation, or cascading loss if a generator were to go offline.

161. NEI states that transmission planning and operations Reliability Standards require the transmission system to be able to withstand threats from the loss of a single generator. According to NEI, entities having the responsibility to meet the Requirements of these other Reliability Standards already incorporate the limitations of nuclear generating plants into their studies and analyses and address the loss of a given generator and limit the effect of the loss on the grid. NEI states that NUC–001–1 deals only with the important interaction and communication between the nuclear plant generator operator and transmission entities to ensure that the NPIRs are met, while the operation of the Bulk-Power System and requirements to prevent instability, separation, or cascading failures are adequately addressed by other Reliability Standards.

162. Ontario IESO and Hydro One characterize the consequences of a violation of Requirement R4.2 or R4.3 as affecting a nuclear plant generator operator's license requirements and may result in a shut down, but argue that such a result, while significant to the generator, would not cause significant degradation in Bulk-Power System. Ontario IESO and Hydro One state that the shut down of a power plant is a controlled process, not a contingency, and conclude that reliability impacts such as instability, uncontrolled islanding and cascading would not result.

163. Midwest ISO disagrees with the Commission's assessment that a high violation risk factor is necessary for Requirement R4.2. In most cases, if the reliability coordinator and transmission operator are in a condition in which the bulk electric system cannot support the off-site power requirements of a nuclear plant, the nuclear plant is not at risk of tripping. Normally, in its licensing requirements, the plant is required after a period of time (usually two to eight hours) to begin a *controlled* shutdown of the reactor in this situation.

iii. Commission Determination

164. The Commission confirms its findings proposed in the NOPR and directs the ERO to revise the violation risk factor for Requirements R4.2 and R4.3 from medium to high. We disagree with the characterization that Requirements R4.2 and R4.3 deal only with the ''important interaction and communication between the nuclear plant [generator] operator and transition entities to ensure that the NPIRs are met.'' [85] As discussed in the NOPR, these requirements are directly relevant to ensuring the continued operation of a nuclear power plant on the Bulk-Power System. A failure of the transmission entity to operate as needed to provide the NPIR or inform the nuclear plant generator operator when its ability to assess the operation of the electric system is lost, puts the Bulk-Power System at risk of cascading outages. We note that most nuclear plant sites operate more than one nuclear power plant. If a transmission entity loses its ability to assess the operation of the electric system affecting its NPIRs, it will, in most cases, impact more than one nuclear power plant where the result would be the shutdown, controlled or otherwise, of the applicable nuclear plant site. As a result, there could be significant loss of firm transmission service if not cascading.

165. The Commission is also not persuaded by the argument that elevated violation risk factors are not justified because the shutdown of a nuclear power plant is a controlled process and not a contingency. NERC defines a contingency as, ''the unexpected failure or outage of a system component, such as a generator, transmission line, circuit breaker, switch or other electrical element.'' Although the shut down of a nuclear power plant is described as a ''controlled'' process because of the methodical and orderly operation of safety systems to disconnect the plant from the Bulk-Power System, the shut down is initiated because Bulk-Power System conditions are unsuitable for the continued operation of the nuclear power plant on the Bulk-Power System. If the shutdown, albeit controlled, of a nuclear power plant is unexpected in the course of the operation of the Bulk-Power System, it is, nonetheless, a contingency that must be accommodated in real time operations without the loss of firm service.

166. Further, not continuously providing specific NPIRs may result in the additional loss of one or more nuclear power plants during single or multiple contingencies. The Commission is concerned that an initial system event near, but unrelated to, one or more nuclear power plants that degrades system conditions beyond the nuclear power plant's license requirements could result in the disconnection of one or more nuclear power plants from the Bulk-Power System. In this case, the outages of multiple nuclear power plants would be the result of one contingency and would be considered by the Commission to be a single event. However, the reliability impact to the bulk electric system due to this single event may not be addressed in operations planning and long term planning, thus putting the Bulk-Power System at risk of cascading outages. Thus, not achieving the NPIRs could put the Bulk-Power System in

[83] *See also* NERC November 19, 2007 Petition at 20 (''The proposed reliability standard also acknowledges that the obligation to public safety relative to nuclear plant operation establishes a unique set of requirements that other generating facilities are not subjected to. In order to protect the common good, the applicable transmission entities must respect these unique requirements that maintain and/or restore offsite power adequate to supply minimum nuclear safety requirements.'').

[84] *See* ConEdison, Detroit Edison, Entergy, Ontario IESO and Hydro One, Midwest ISO, NEI, Ontario Power, and SCE&G comments.

[85] NEI comments at 8.

danger of instability, separation or a cascading sequence of failures.

167. For the reasons discussed previously in this Final Rule, the Commission reiterates that it is not appropriate to assess a requirement's violation risk factor assignment based on compliance with other Reliability Standard requirements.

168. Therefore, consistent with the definition of a high violation risk factor, for the reasons discussed above, the Commission directs the ERO to revise the violation risk factor assignment for Requirements R4.2 and R4.3 from medium to high no later then 90 days before the effective date of the Reliability Standard.

c. Requirement R5

i. NOPR

169. The NOPR proposed to direct the ERO to raise the violation risk factor for Requirement R5 from medium to high. The NOPR noted that Requirement R5 obligates a nuclear plant generator operator to operate its system consistent with the interface agreement developed under NUC–001–1, and that the separation of a typically large nuclear power plant from the grid may significantly affect grid operations. Because nuclear power plant service interruptions could be initiated by incidents occurring on the nuclear power plant system, including incidents stemming from a failure to meet interface agreement terms, a violation of Requirement R5 could directly affect the reliability of the system. That possibility suggested that the violation risk factor for Requirement R5 should be raised from medium to high.

ii. Comments

170. Several commenters object to the proposal to raise the Requirement R5 violation risk factor from medium to high.[86] NEI characterizes Requirement R5 as ensuring that the nuclear plant generator operator understands and implements the interface agreements, and coordinates with the applicable transmission entities to ensure nuclear plant safe operation and shutdown. According to NEI, the nuclear industry consensus is that operation of the Bulk-Power System to prevent instability, separation, or cascading failures is adequately addressed by other Reliability Standards. According to NEI, the NOPR overstates the significance of the separation of a nuclear plant from the Bulk-Power System, because all Bulk-Power Systems are designed and operated to handle the loss of the largest generator on the grid as an N–1 contingency, including a large nuclear power plant, which may not be the largest generator on the grid. Hence, the separation of a nuclear power plant should not be assumed to result in a loss of Bulk-Power System stability. NEI states that transmission grids must be able to withstand the loss of a single generating unit, including nuclear power plants and other facilities.[87] Thus, according to NEI the tripping of a large nuclear unit should not directly cause Bulk-Power System instability, separation or a cascading sequence of failures or place the Bulk-Power System at an unacceptable risk of instability, separation, or cascading failures. Should a nuclear generating unit separate from the grid and the resultant ''post-trip'' voltage be insufficient to meet the nuclear offsite power requirements for the site, it would not result in the automatic separation of the remaining nuclear units. Any subsequent shutdown of the nuclear units should not introduce grid or nuclear system transients because the shutdown would be an operator controlled, orderly process to ensure compliance with the requirements of the license.

171. Ontario IESO and Hydro One concede that failure to meet this requirement may significantly affect grid control and operation, but suggest that the reliability of the power grid will not be affected in a way that will cause instability, uncontrolled islanding and cascading because the separation of the plant would be coordinated and implemented in a controlled manner. Entergy states that the purpose of NUC–001–1 is to ensure the safe operation of nuclear power plants by requiring plant operators and transmission entities to coordinate to meet NPIRs and that other Reliability Standards provide for operation of the Bulk-Power System to prevent instability, separation, or cascading failures.

iii. Commission Determination

172. The Commission adopts the NOPR proposal. Commenters argue that elevating the violation risk factor assignment for Requirement R5 is not justified because: (1) The Commission overstates the significance of separation of a nuclear plant from the Bulk-Power System; (2) the reliability concerns associated with instability, separation, or cascading outages are already addressed in other Reliability Standards, and (3) the shutdown of a nuclear power plant is a controlled process and not a contingency.

173. Each of these arguments has been previously addressed in this Final Rule. Accordingly, the Commission directs the ERO to revise the violation risk factor assignment for Requirement R5 from medium to high no later then 90 days before the effective date of the Reliability Standard.

d. Requirements R7 and R8

i. NOPR

174. The NOPR proposed to direct the ERO to raise the violation risk factors for Requirements R7 and R8 from medium to high, and sought comment. Requirements R7 and R8 obligate a nuclear plant generator operator and its transmission entities to inform each other of actual or proposed changes to their facilities that affect their ability to meet NPIRs. Because the information to be exchanged, such as ''limits'' and ''protection systems,'' affects the ability of a plant to remain connected to the Bulk-Power System, the NOPR stated that a failure to provide information could result in a nuclear plant disconnecting from the Bulk-Power System, and place the Bulk-Power System at risk for cascading outages. To account for such a risk, the NOPR proposed to direct the ERO to raise the violation risk factors for Requirements R7 and R8 from medium to high.

ii. Comments

175. NEI states the violation risk factors for Requirements R7 and R8 should not be changed. NEI states Requirements R7 and R8 require nuclear plant generator operators and their transmission entities to communicate with each other regarding any changes to their facilities that could affect their capacity to meet their NPIR obligations. Since violations of these requirements are not likely to lead to Bulk-Power System instability, separation, or cascading failures, the violation risk factors for Requirements R7 and R8 should not be changed. Entergy also argues that Requirements R7 and R8 should have a medium violation risk factor, since a failure of communication to be avoided under the Requirements is not likely to lead to significant events such as Bulk-Power System instability, separation, or cascading failures, but only over the parties ability to monitor and oversee the Bulk-Power System or cause other unspecified problems.

[86] *See* Detroit Edison, Ontario IESO and Hydro One, Entergy, Ontario Power, and SCE&G comments.

[87] NEI cites the NERC ''Category B'' stability criteria which it describes as the most restrictive criteria. *See* TPL–001–000, Table 1, ''Transmission Planning Standards.'' NEI also cites what it characterizes as more stringent regional criteria that require that the common mode simultaneous outage of two generator units (nuclear or otherwise) connected to the same switchyard shall not result in cascading, though not addressed by the initiating events in NERC ''Category C.''

176. Ontario IESO and Hydro One also suggest that the violation risk factors of Requirements R7 and R8 be assigned to medium, not high.[88] They agree that failure to meet these requirements may significantly affect grid control and operation, but not the reliability of the power grid characterized by instability, uncontrolled islanding and cascading. Finally, ConEdison believes that the violation risk factor for Requirement R8 should not be changed because transmission planners and operators do not analyze generation from nuclear power plants differently than other generators or the requirements are largely administrative.

iii. Commission Determination

177. The Commission adopts the NOPR proposal. As discussed in the NOPR and in additional detail above, if transmission entities and nuclear plant generator operators do not provide or otherwise communicate information concerning system changes to each other, their planning and operating analyses may not include the true consequences of a single contingency. As a result, unanticipated events that could result in the disconnection of one or more nuclear power plants from the Bulk-Power System, in addition to the consequences of the initiating event, could place the Bulk-Power System at risk for cascading outages.

178. Arguments that elevating the violation risk factor assignment for Requirements R7 and R8 is not justified because the shutdown of a nuclear power plant is a controlled process and transmission planners and operators do not analyze nuclear power plants differently than other generation have been previously addressed in this Final Rule.

179. Accordingly, consistent with the definition of a high violation risk factor, and for the reasons discussed above, the Commission directs the ERO to revise the violation risk factor assignment for Requirements R7 and R8 from medium to high no later then 90 days before the effective date of the Reliability Standard.

e. Requirement R9

i. NOPR

180. The NOPR proposed to direct the ERO to raise the violation risk factor for Requirement R9 from lower to medium, and sought comment. Requirement R9 describes specific administrative, technical, operations, maintenance, coordination, communications, and training elements that a nuclear plant generator operator and its transmission entities must include in their interface agreement. The NOPR stated that Requirement R9 is similar to Requirement R2, in that it co-mingles an administrative element of incorporating the various elements into the interface agreement with the operational element of determining how the parties to the interface agreement will address the administrative, technical, operations, maintenance, coordination, communications, and training issues in order to provide for safe nuclear power plant operation and shutdown. The NOPR stated that a violation of Requirement R9 could result in an inability to resolve system conditions in an emergency because the necessary operational or emergency planning elements may not be in place. Therefore, the NOPR noted that a violation of Requirement R9 ''could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the Bulk-Power System.'' In response, the NOPR proposed to find that a medium violation risk factor is appropriate for Requirement R9, but stated that if the ERO wishes to assign a lower violation risk factor to the purely administrative sub-Requirements of Requirement R9, it could propose appropriate differentiation in its comments.

ii. Comments

181. Commenters object to raising this violation risk factor because Requirement R9 is a planning requirement that is administrative in nature. Because generation from nuclear power plants is not analyzed differently than other generation by transmission planners and operators their operations do not justify higher risk factors.

182. NEI states the violation risk factor for Requirement R9 should not be changed. Requirement R9 sets forth the specific administrative, technical, operations, maintenance, coordination, communications, and training elements that a nuclear plant generator operator and its transmission entities must incorporate in the interface agreement. It argues that, while the implementation of these elements is substantive, Requirement R9 is an administrative requirement to include the specified provisions. Violations of this requirement can be readily identified and corrected; therefore, violations should not directly affect the Bulk-Power System.

183. Entergy characterizes Requirement R9 as addressing the various elements that parties must address in an interface agreement and supporting the terms in Requirements R3 through 8. Entergy states that Requirement R9 is administrative in nature, occurs in the planning time frame and violations could be easily corrected without affecting the reliability of the Bulk-Power System.

iii. Commission Determination

184. Consistent with the NOPR, the Commission directs the ERO to revise the violation risk factor assignment for Requirement R9 from lower to medium. The Commission disagrees with commenters that a lower violation risk factor is appropriate because Requirement R9 is an administrative requirement to include the specified provisions. While the Commission recognized in the NOPR that many of the requirements of the proposed Reliability Standard are administrative in nature, these same requirements provide for the development of procedures to ensure the safe and reliable operation of the grid, and responses to potential emergency conditions.

185. Further, as identified in the NOPR, Requirement R9 co-mingles the administrative element of incorporating the various elements into the interface agreement with the operational elements of determining how the parties to the interface agreement will address the administrative, technical, operations, maintenance, coordination, communications, and training issues for safe nuclear power plant operation and shutdown. Consistent with violation risk factor Guideline 5, the Commission expects the assigned violation risk factor to reflect the highest reliability risk objective of the requirement. A violation of the highest reliability risk objectives of Requirement R9, under emergency, abnormal, or restorative conditions has the potential to affect the electrical state or capability of the Bulk-Power System.

186. As discussed previously in this Final Rule, arguments that elevating the violation risk factor assigned to Requirement R9 are not justified because the subject requirement takes place in the planning time frame, thus violations are quickly detected and corrected, are fundamentally flawed.

187. Therefore, consistent with the definition of a medium violation risk factor, and for the reasons discussed above, the Commission directs the ERO to revise the violation risk factor assignment for Requirement R9 from lower to medium no later then 90 days before the effective date of the Reliability Standard.

[88] *See also* Detroit Edison, Ontario Power, and SCE&G comments.

H. Violation Severity Levels

188. For each Requirement of a Reliability Standard, NERC states that it will also define up to four violation severity levels—lower, moderate, high and severe—as measurements of the degree to which the Requirement was violated. For a specific violation of a particular Requirement, NERC or the Regional Entity will establish the initial value range for the base penalty amount by finding the intersection of the applicable violation risk factor and violation severity level in the Base Penalty Amount Table in Appendix A of the Sanction Guidelines.[89]

1. NOPR

189. The NOPR noted that NERC's November 19, 2007 Petition proposed violation severity levels that apply generally to all violations of the Requirements of NUC–001–1, rather than to specific Requirements and sub-Requirements, but that NERC had submitted proposed new violation severity levels for each Requirement and sub-Requirement of NUC–001–1 in Docket No. RR08–4–000.[90]

190. The NOPR stated the Commission's intention to address issues relating to NUC–001–1 violation severity levels in the Docket No. RR08–4–000 proceeding, but approve the proposed undifferentiated violation severity levels on an interim basis, in case the revised violation severity levels are not approved before the NUC–001–1 effective date. Because the initial violation severity levels for NUC–001–1 resemble previously proposed levels of non-compliance by grouping Requirements in NUC–001–1 rather than distinguishing on a per-Requirement and sub-Requirement basis, the NOPR proposed to treat the proposed, undifferentiated violation severity levels for NUC–001–1 consistent with the treatment adopted for levels of non-compliance, until the Requirement and sub-Requirement-specific violation severity levels are approved.[91]

2. Comments

191. NERC concurs with the Commission's approach to violation severity levels.

3. Commission Determination

192. The Commission takes no action on the violation severity levels in this Final Rule. The June 19, 2008 Order on violation severity levels directed the ERO to assess the violation severity levels for proposed NUC–001–1 in accordance with the Commission's guidelines set forth in that order.[92] As such, NERC has been directed to re-submit violation severity levels for NUC–001–1, including appropriate revisions based on the application of the Commission's guidelines, as part of NERC's six-month compliance filing directed in the Violation Severity Level Order.[93]

III. Information Collection Statement

193. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[94] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Paperwork Reduction Act (PRA)[95] requires each federal agency to seek and obtain OMB approval before undertaking a collection of information directed to 10 or more persons, or continuing a collection for which OMB approval and validity of the control number are about to expire.[96] The PRA defines the phrase ''collection of information'' to be the ''obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States; or (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes.'' [97]

194. This Final Rule approves the new Reliability Standard developed by NERC as the ERO. In addition, the Final Rule directs the ERO to develop a modification to one Requirement through its Reliability Standards development process. Section 215 of the FPA authorizes the ERO to develop and enforce Reliability Standards that provide for an adequate level of reliability of the Bulk-Power System. Pursuant to the statute, the ERO must submit each Reliability Standard that it proposes to be made effective to the Commission for approval.[98]

195. Reliability Standard NUC–001–1 does not require responsible entities to file information with the Commission. Nor, with the exception of a three year self-certification of compliance, does the Reliability Standard require responsible entities to file information with the ERO or Regional Entities. However, the Reliability Standard does require responsible entities to develop and maintain certain information for a specified period of time, subject to inspection by the ERO or Regional Entities.

196. Reliability Standard NUC–001–1 requires nuclear plant generator operators and entities that provide generation, transmission and distribution services relating to off-site power (these entities are defined as ''transmission entities'') to enter into interface agreements with nuclear plant generator operators that will govern certain communication, training, operational and planning elements for use in addressing generation and transmission system limits and nuclear licensing requirements. The Commission understands that most entities subject to this Reliability Standard already have such agreements in place. The responsible entities are also required to retain evidence that they executed such an agreement and incorporated its terms into systems planning and operations. Further, each nuclear plant generator operator and transmission entity must self-certify its compliance to the compliance monitor once every three years.

197. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. In the NOPR, the Commission sought comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden

[89] *See North American Electric Reliability Corp.*, 119 FERC ¶ 61,248, at P 74 (2007) (directing NERC to develop up to four violation severity levels (lower, moderate, high, and severe) as measurements of the degree of a violation for each requirement and sub-requirement of a Reliability Standard).

[90] The updated NUC–001–1 violation severity levels are provided in NERC's March 4, 2008 filing of revised Exhibit A, containing the NERC violation severity level matrix, in Docket No. RR08–4–000.

[91] *See North American Electric Reliability Corp.*, 119 FERC ¶ 61,248 at P 78–80.

[92] *North American Electric Reliability Corp.*, 123 FERC ¶ 61,284, at P 14 (2008) (Violation Severity Level Order).

[93] The Commission notes that NERC has sought rehearing of the Violation Severity Level Order concerning the scope and timing of the compliance filing in Docket No. RR08–4–001.

[94] 5 CFR 1320.11.

[95] 44 U.S.C. 3501–20.

[96] 44 U.S.C. 3502(3)(A)(i), 44 U.S.C. 3507(a)(3).

[97] 44 U.S.C. 3502(3)(A).

[98] *See* 16 U.S.C. 824o(d).

estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

198. Our estimate below regarding the number of respondents is based on the NERC compliance registry as of April 2007 and NERC's November 19, 2007 Petition that is the subject of this proceeding. In its Petition, NERC states that 104 nuclear power plants are subject to the proposed Reliability Standard. These plants are run by approximately 30 different utilities and are located on 65 different sites. Each plant must contract with transmission entities to obtain off-site power, and coordinate distribution and transmission services for such power.

199. The Nuclear Reliability Standard identifies 11 categories of functional entities that could be a transmission entity when providing covered services, including transmission operators, transmission owners, transmission planners, transmission service providers, balancing authorities, reliability coordinators, planning authorities, distribution providers, load-serving entities, generator owners and generator operators. NERC's compliance registry indicates that there is a significant amount of overlap among the entities that perform these functions. Therefore, in some instances, a single entity may be registered under several of these functions. The November 19, 2007 Petition includes NERC drafting team comments which report, ''In many cases, agreements are not two-party [agreements]—they are often multi-party agreements involving RTO/ISO Protocols, transmission and generation owners and others.'' [99] Therefore, this analysis attempts to account for the overlap of services to be provided by entities responsible for the various roles identified in the Reliability Standard, as well as the fact that certain plants may need to coordinate with multiple entities.

200. Under NUC–001–1, the 104 nuclear power plants must coordinate with off-site power suppliers and related transmission and/or distribution service providers. NUC–001–1 drafting team reports in its responses to SAR comments, ''Nuclear plant generators and most nuclear offsite power supplies interconnect with the bulk electric system at transmission system voltage levels. While backup station service for some plants may be provided via distribution lines, these cases are the exception, not the rule.'' [100] Assuming conservatively, that not more than half of the nuclear power plants call for multi-party coordination and those that do involve all the types of parties listed by the drafting team, the Commission estimates that 52 nuclear power plants will execute bi-lateral interface agreements and 52 nuclear power plants will execute multi-lateral interface agreements with approximately four other parties. Thus, the Commission estimates that the 104 nuclear power plants will enter into agreements with an additional 260 parties to bilateral and multi-party agreements, providing 364 as the total number of entities required to comply with the information ''reporting'' or development requirements of the Nuclear Reliability Standard.[101]

201. *Burden Estimate:* The Public Reporting burden for the requirements contained in the Final Rule is as follows:

Data collection	Number of respondents	Number of responses	Hours per respondent	Total annual hours
FERC–725F:				
Nuclear Plant Owners or Operators	104	1	Reporting: 80 Recordkeeping: 40	Reporting: 8,320. Recordkeeping: 4,160.
Investor-Owned Utilities	130	1	Reporting: 80 Recordkeeping: 40	Reporting: 10,400. Recordkeeping: 5,200.
Large Municipals, Cooperatives and other agencies	130	1	Reporting: 80 Recordkeeping: 40	Reporting: 10,400. Recordkeeping: 5,200.
Total	364			43,680.

Total Hours: (Reporting 29,120 hours + Recordkeeping 14,560 hours) = 43,680 hours. (*FTE = Full Time Equivalent or 2,080 hours*)

Total Annual hours for Collection: Reporting + Recordkeeping = 43,680 hours.

Information Collection Costs: The Commission finds the average annualized cost to be the total annual hours (Reporting) 29,120 times $120 = $3,494,400.

Recordkeeping = @ $40/hour = $ 582,400, with labor calculated as file/record clerk @ $17 an hour + supervisory @ $23 an hour.

Total costs = $4,076,800.

The Commission believes that this estimate may be conservative because most if not all of the applicable entities currently have agreements in place to provide for coordination between a nuclear plant generator operator and its local transmission, distribution and off-site power suppliers. Furthermore, multiple plants are located on certain sites, and one entity may operate multiple plants, providing for potential economies in updating, drafting and executing the interface agreements.

Title: FERC–725F, Mandatory Reliability Standard for Nuclear Plant Interface Coordination.

Action: Final Rule.

OMB Control No.: [To be determined.]

Respondents: Business or other for profit, and/or not for profit institutions.

Frequency of Responses: One time to initially comply with the rule, and then on occasion as needed to revise or modify. In addition, annual and three-year self-certification requirements will apply.

Necessity of the Information: NUC–001–1, implements the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the Nuclear Reliability Standard will ensure that system operating limits or SOLs used in the

[99] NERC Nuclear Reliability Standard drafting team, ''Consideration of Comments, Draft 2—SAR on Nuclear Plant Offsite Power Reliability'' at 2 (May 23, 2005), filed in November 19, 2007 Petition, Exh. B, Record of Development of Proposed Reliability Standard.

[100] NERC Nuclear Reliability Standard drafting team, ''Consideration of Comments on 2nd Draft of Nuclear Off-site Power Supply Standard'' at 54 (Feb. 7, 2007), filed in November 19, 2007 Petition, Exh. B, Record of Development of Proposed Reliability Standard.

[101] Because it is assumed that each plant operator must ensure that appropriate agreements are in place for each plant, this analysis assesses the workload by measuring the work for 104 plants, rather than for the 30 nuclear plant operators.

reliability planning and operation of the Bulk-Power System are coordinated with nuclear licensing requirements in order to ensure the safe operation and shut down of nuclear power plants.

Internal review: The Commission has reviewed the requirements pertaining to the Nuclear Reliability Standard for the Bulk-Power System and determined that the requirements adopted are necessary to meet the statutory provisions of the Energy Policy Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

202. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [*Attention:* Michael Miller, Office of the Executive Director, *Phone:* (202) 502–8415, *fax:* (202) 273–0873, *e-mail: michael.miller@ferc.gov*]. Comments on the requirements of the Final Rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission], *e-mail: oira_submission@omb.eop.gov*.

IV. Environmental Analysis

203. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[102] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. The actions proposed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[103] Accordingly, neither an environmental impact statement nor environmental assessment is required.

V. Regulatory Flexibility Act Analysis

204. The Regulatory Flexibility Act of 1980 (RFA)[104] generally requires a description and analysis of Final Rules that will have significant economic impact on a substantial number of small entities. Most of the entities, *i.e.*, planning authorities, reliability coordinators, transmission planners and transmission operators, to which the requirements of this rule would apply do not fall within the definition of small entities.[105]

205. As indicated above, based on available information regarding NERC's compliance registry, approximately 364 entities, including owners and operators of 104 nuclear power plants, will be responsible for compliance with the new Reliability Standard. It is estimated that one-third of the responsible entities, about 130 entities, would be municipal and cooperative organizations. In addition to generator owners and operators and distribution service providers, the Nuclear Reliability Standard applies to planning authorities, transmission planners, transmission operators and reliability coordinators, which tend to be larger entities. Thus, the Commission believes that only a portion, approximately 30 to 40 of the municipal and cooperative organizations to which the Reliability Standard applies, qualify as small entities.[106] The Commission does not consider this a substantial number of all municipal and cooperative organizations. Moreover, as discussed above, the Nuclear Reliability Standard will not be a burden on the industry since most if not all of the applicable entities currently coordinate operations and planning with nuclear plant generator operators and the Nuclear Reliability Standard will simply provide a common framework for agreements governing such coordination and many of the entities already have agreements in place to meet prior NRC requirements.

206. Based on this understanding, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

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

208. 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.

209. 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 (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.*

By the Commission.

Kimberly D. Bose,

Secretary.

Note: This Appendix will not appear in the Code of Federal Regulations.

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

Abbreviation	Entity
Ameren	Ameren Service Co.

[102] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. and Regs. ¶ 30,783 (1987).

[103] 18 CFR 380.4(a)(5).

[104] 5 U.S.C. 601–12.

[105] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632 (2006). According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

[106] According to the DOE's Energy Information Administration (EIA), there were 3,284 electric utility companies in the United States in 2005, and 3,029 of these electric utilities qualify as small entities under the SBA definition. Among these 3,284 electric utility companies are: (1) 883 cooperatives of which 852 are small entity cooperatives; (2) 1,862 municipal utilities, of which 1842 are small entity municipal utilities; (3) 127 political subdivisions, of which 114 are small entity political subdivisions; and (4) 219 privately owned utilities, of which 104 could be considered small entity private utilities. *See* Energy Information Administration Database, Form EIA–861, Dept. of Energy (2005), *available at http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

COMMENTS ON NOTICE OF PROPOSED RULEMAKING—Continued

Abbreviation	Entity
ATC+	American Transmission Company LLC.
CenterPoint Energy	CenterPoint Energy Houston Electric, LLC.
ConEdison	Consolidated Edison of New York, Inc.
Constellation	Constellation Energy Group, Inc.
Detroit Edison	Detroit Edison Company.
Dominion	Dominion Resources, Inc.
Duke	Duke Energy Corporation.
EEI	Edison Electric Institute.
Entergy	Entergy Services, Inc.
Exelon	Exelon Corporation.
ISO/RTO Council	ISO/RTO Council.
International Transmission	International Transmission Co., Michigan Electric Transmission Co., LLC and ITC Midwest.
Midwest ISO	Midwest Independent Transmission System Operator, Inc.
National Grid+	National Grid USA.
NERC	North American Electric Reliability Corp.
NEI+	Nuclear Energy Institute.
Ontario IESO and Hydro One	Independent Electricity System Operator of Ontario and Hydro One Networks Inc.
Ontario Power	Ontario Power Generation Inc.
SCE&G	South Carolina Electric and Gas Company.
Southern	Southern Company Services, Inc.
TVA	Tennessee Valley Authority.
Wisconsin Electric	Wisconsin Electric Power Company.

+ Comments filed out-of-time.

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Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 358

Standards of Conduct for Transmission Providers; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 358

[Docket No. RM07–1–000; Order No. 717]

Standards of Conduct for Transmission Providers

Issued October 16, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations adopted on an interim basis in Order No. 690, in order to make them clearer and to refocus the rules on the areas where there is the greatest potential for abuse. The Final Rule is designed to foster compliance, facilitate Commission enforcement, and conform the Standards of Conduct to the decision of the U.S. Court of Appeals for the DC Circuit in *National Fuel Gas Supply Corporation* v. *FERC*, 468 F. 3d 831 (DC Cir. 2006). Specifically, the Final Rule eliminates the concept of energy affiliates and eliminates the corporate separation approach in favor of the employee functional approach used in Order Nos. 497 and 889.

DATES: *Effective Date:* This rule will become effective November 26, 2008.

FOR FURTHER INFORMATION CONTACT:

Kathryn Kuhlen, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Kathryn.Kuhlen@FERC.gov*, (202) 502–6855.

Jamie A. Jordan, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Jamie.Jordan@FERC.gov* (202) 502–6628.

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Regulatory Text
Appendix A

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

I. Introduction

1. This Final Rule amends the Standards of Conduct for Transmission Providers (the Standards of Conduct or the Standards) to make them clearer and to refocus the rules on the areas where there is the greatest potential for abuse. The Standards have substantially evolved over the twenty years since they were first adopted for the gas industry in 1988. During that time, the Commission added numerous exceptions and additions to the original regulations (and to the regulations adopted for the electric industry in 1996), including revisions made in Order No. 2004,[1] in which the Commission combined the separate Standards for the gas and electric industry, expanded the scope of the Standards to include the new concept of energy affiliates, and adopted a corporate separation approach to the relationship of transmission providers and their marketing arms. The cumulative effect of many of these changes rendered the Standards as a whole difficult for regulated entities to apply and for the Commission to enforce. Furthermore, on appeal of Order No. 2004, the U.S. Court of Appeals for the DC Circuit disapproved of the expansion of the Standards to include energy affiliates, and vacated Order No. 2004 as it applied to the gas industry.[2]

2. The reforms adopted in this Final Rule are designed to eliminate the elements that have rendered the Standards difficult to enforce and apply. They combine the best elements of Order No. 2004 (especially the integration of gas and electric Standards, an element not contested in *National Fuel*), with those of the Standards originally adopted for the gas industry in Order No. 497 [3] and for the electric industry in Order No. 889.[4] Specifically, the Final Rule (i) eliminates the concept of energy affiliates and (ii) eliminates the corporate separation approach in favor of the employee functional approach used in Order Nos. 497 and 889. In addition, the reforms adopted here conform the Standards to the *National Fuel* opinion. At bottom, these reforms, by making the Standards clearer and by refocusing them on the areas where there is the greatest potential for affiliate abuse, will make compliance less elusive and subjective for regulated entities, and will facilitate enforcement of the Standards by the Commission.

II. Background

3. The Commission first adopted Standards of Conduct in 1988, in Order No. 497. These initial Standards prohibited interstate natural gas pipelines from giving their marketing affiliates or wholesale merchant functions undue preferences over non-affiliated customers. Citing demonstrated record abuses, the U.S. Court of Appeals for the DC Circuit upheld these Standards in 1992.[5] The Commission adopted similar Standards for the electric industry in 1996, in Order No. 889, prohibiting public utilities from giving undue preferences to their marketing affiliates or wholesale merchant functions. Both the electric and gas Standards sought to deter undue preferences by: (i) Separating a transmission provider's employees engaged in transmission services from those engaged in its marketing services, and (ii) requiring that all transmission customers, affiliated and non-affiliated, be treated on a non-discriminatory basis.

4. Changes in both the electric and gas industries, in particular the unbundling of sales from transportation in the gas industry and the increase in the number of power marketers in the electric industry, led the Commission in 2003 to issue Order No. 2004, which broadened the Standards to include a new category of affiliate, the energy affiliate.[6] The new Standards were made applicable to both the electric and gas industries, and provided that the transmission employees of a transmission provider [7] must function independently not only from the company's marketing affiliates but from its energy affiliates as well, and that transmission providers may not treat either their energy affiliates or their marketing affiliates on a preferential basis. Order No. 2004 also imposed requirements to publicly post information concerning a transmission provider's energy affiliates.

5. On appeal by members of the natural gas industry, the U.S. Court of Appeals for the DC Circuit overturned the Standards as applicable to gas transmission providers, on the grounds that the evidence of energy affiliate

[1] *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,155 (2003), *order on reh'g*, Order No. 2004–A, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,161 (2004), *order on reh'g*, Order No. 2004–B, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,166 (2004), *order on reh'g*, Order No. 2004–C, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,172 (2004), order on reh'g, Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. Nat'l Fuel Gas Supply Corporation* v. *FERC,* 468 F.3d 831 (DC Cir. 2006) (*National Fuel*).

[2] *National Fuel*, 468 F. 3d at 845.

[3] *Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines,* Order No. 497, 53 FR 22139 (1988), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on reh'g*, 54 FR 52781 (1989), FERC Stats & Regs., Regulations Preambles 1986–1990 ¶ 30,868 (1989); Order No. 497–B, order extending sunset date, 55 FR 53291 (1990), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,934 (1991), *reh'g denied*, 57 FR 5815 (1992), 58 FERC ¶ 61,139 (1992); *aff'd in part and remanded in part sub nom. Tenneco Gas* v. *FERC*, 969 F.2d 1187 (DC Cir. 1992) (collectively, Order No. 497) (*Tenneco*).

[4] *Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct*, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,035 (1996); Order No. 889–A, *order on reh'g*, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles July 1996—December 2000 ¶ 31,049 (1997); Order No. 889–B, *reh'g denied*, 62 FR 64715 (Dec. 9, 1997), 81 FERC ¶ 61,253 (1997) (collectively, Order No. 889).

[5] *Tenneco*, 969 F. 2d at 1214.

[6] The new Standards defined an Energy Affiliate as an affiliate of a transmission provider that (1) engages in or is involved in transmission transactions in U.S. energy or transmission markets; (2) manages or controls transmission capacity of a transmission provider in U.S. energy or transmission markets; (3) buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or (4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets. 18 CFR 358.3(d). Certain categories of entities were excluded from this definition in following subsections of the regulations.

[7] A transmission provider was defined as (1) any public utility that owns, operates or controls facilities used for transmission of electric energy in interstate commerce; or (2) any interstate natural gas pipeline that transports gas for others pursuant to subpart A or part 157 or subparts B or G of part 284 of the same chapter of the regulations. 18 CFR 358.3(a).

abuse cited by the Commission was not in the record.[8] The court noted that the dissenting Commissioners in Order No. 2004 had expressed concern that the Order would diminish industry efficiencies without advancing the FERC policy of preventing unduly discriminatory behavior.[9]

6. The Commission issued an Interim Rule on January 9, 2007,[10] which repromulgated the portions of the Standards not challenged in *National Fuel*. The Commission then set about determining how to respond to the DC Circuit's order on a permanent basis. On January 18, 2007, the Commission issued its initial NOPR,[11] requesting comment on whether the concept of energy affiliates should be retained for the electric industry, proposing the creation of two new categories of employees denominated as Competitive Solicitation Employees and Planning Employees, carrying over the Interim Rule's new definition of marketing to cover asset managers, and making numerous other proposals. The Commission received thousands of pages of both initial and reply comments from some 95 individuals, companies, and organizations.

7. Consideration of these comments, coupled with the Commission's own experience in administering the Standards, persuaded the Commission to modify the approach advanced in the initial NOPR. For that reason, the Commission issued a new NOPR on March 27, 2008,[12] and invited comment both on its general approach and on its specific provisions. In the NOPR, the Commission proposed to return to the approach of separating by function transmission personnel from marketing personnel, an approach that had been adopted in Order Nos. 497 and 889. The Commission also proposed to clarify and streamline the Standards in order to enhance compliance and enforcement, and to increase transparency in the area of transmission/affiliate interactions that would aid in the detection of any undue discrimination. Comments were received from 62 companies and organizations, which are listed in Appendix A.[13] The vast majority of the comments were laudatory both of the Commission's efforts to simplify and clarify the Standards, and of the general approaches taken by the Commission to achieve that goal.

8. Notwithstanding general agreement with the Commission's overall approach, many commenters submitted requests for clarification and modifications. In most instances, the modifications proposed were advanced with the stated goal either to make the Standards even clearer, or to address matters which some entities believed had fallen between the cracks in the transition from the existing Standards to a more streamlined approach. The Commission has carefully considered these comments and agrees that in several areas, modifications to the regulatory text are needed. This Final Rule adopts the overall approach set forth in the NOPR, but modifies the regulatory text to better achieve the goals of clarity and enforceability. It also provides clarifications in several areas in order to aid regulated entities in applying the Standards.

III. Discussion

A. Overall Approach

1. Commission Proposal

9. The NOPR proposed to simplify and clarify the Standards, and in particular to: (i) Eliminate the concept of energy affiliates, and (ii) eliminate the corporate separation approach to separating a transmission provider's transmission function employees from its marketing function employees, instead returning to the employee functional approach utilized in Order Nos. 497 and 889. The NOPR pointed out that the corporate separation approach had proven difficult to implement, as evidenced by the scores of waiver requests submitted to the Commission, and impeded legitimate integrated resource planning and competitive solicitations, as reflected in the concerns raised by the electric industry in particular and also by state commissions. The Commission also found that the existing Standards are too complex to facilitate compliance or support enforcement efforts, and have had the unintended effect of making it more difficult for transmission providers to reasonably manage their businesses.

2. Comments

10. The vast majority of commenters agreed with the Commission's goals of simplifying the Standards in order to achieve greater clarity, efficiencies of operation, and ease of compliance. They also applauded the proposed return to the employee functional approach, stating that it would better promote regulatory certainty than had the corporate separation approach.[14]

11. No commenters proposed that the corporate separation approach be continued, and no commenters requested continuation of the energy affiliate concept. The FTC, however, contended that behavioral rules, including the employee functional approach, cannot fully achieve independent functioning because such an approach remains vulnerable to subtle events of discrimination and preference that may be difficult to detect and document.[15] The FTC and ITC recommend instead that the Commission require vertically integrated firms to structurally unbundle transmission and place operation of the transmission function in the hands of the relevant Regional Transmission Organization (RTO) or Independent System Operator (ISO).[16]

3. Commission Determination

12. The overwhelming support from commenters on the NOPR's overall approach confirms the Commission's conviction that simplifying and clarifying the Standards in the manner proposed will best achieve the twin goals of compliance and enforcement. The Commission therefore adopts the employee functional approach, as set forth in the regulatory text, and eliminates the concept of energy affiliates. Specifics and definitions regarding the employee functional approach, as well as other matters, are discussed below. With respect to the comments of the FTC and ITC, there has been no demonstration that the proposed rules are inadequate to address the potential for undue preferences. Nor do we believe this proceeding is the proper forum to

[8] *National Fuel*, 468 F. 3d at 841.

[9] *Id.* at 838.

[10] *Standards of Conduct for Transmission Providers*, Order No. 690, 72 FR 2427 (Jan. 19, 2007); FERC Stats. & Regs. ¶ 31,237 (2007) (Interim Rule); *clarified by, Standards of Conduct for transmission providers,* Order No. 690–A, 72 FR 14235 (Mar. 27, 2007); FERC Stats. & Regs. ¶ 31,243 (2007) (Order on Clarification and Rehearing).

[11] *Standards of Conduct for Transmission Providers,* 72 FR 3958 (Jan. 29, 2007), FERC Stats. & Regs. ¶ 32,611 (2007) (initial NOPR).

[12] *Standards of Conduct for Transmission Providers,* 73 Fed. Reg. 16,228 (March 27, 2008), FERC Stats. & Regs. ¶ 32,630 (2008) (NOPR).

[13] The acronyms used throughout are defined in Appendix A.

[14] Most commenters expressly support the change in approach to the independent functioning rule from ''corporate separation'' to ''employee functional,'' including ALCOA; Ameren; AGA; APPA; ATC; Arizona PSC; Bonneville; CenterPoint; Chandeleur; California PUC (particularly supporting the Commission's efforts to remove impediments to integrated resource planning); Destin; Dominion Resources; Duke; E.ON; EEI; El Paso; EPSA; Idaho Power; FirstEnergy; INGAA; Iroquois; Kinder Morgan; LPPC; MidAmerican; NARUC; National Grid; NGSA; New York PSC; Nisource; NCPA; PG&E; PSEG; Puget Sound; SMUD; Salt River; SCE; Southern Co. Services; Spectra; TAPS; TANC; TDU Systems; Vectren; WA UTC; Western Utilities Compliance Group; Wisconsin Electric; and Xcel.

[15] FTC at 6–7.

[16] FTC at 9–10; ITC Reply at 4–5.

address issues as complex and far-reaching as those raised by the FTC and ITC.

B. Jurisdiction and Applicability of the Standards

1. Applicability to Pipelines Operating Under Part 157

a. Commission Proposal

13. In the NOPR, the Commission carried forward from the existing Standards the essence of the language in section 358.1 governing the applicability of the Standards to interstate natural gas pipelines. The proposed text reads in pertinent part: ''This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter and conducts transmission transactions with an affiliate that engages in marketing functions.'' Likewise, the definition of transmission provider in proposed section 358.3(k), insofar as it pertains to the gas industry, reads as follows: ''Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.''

b. Comments

14. Hampshire Gas and Northwest Natural object that the texts of proposed sections 358.1(a) and 358.3(k) bring within the ambit of the Standards certain gas pipelines that did not fall within the Standards as issued under Order No. 497.[17] They contend that the NOPR's use of the word ''or'' instead of ''and'' in proposed section 358.1(a) expands the ambit of the regulations to any pipeline that transports gas either under subpart A of part 157 *or* under subpart B or G of part 284. Both commenters note that a pipeline operating only under part 157 does not have the authority to provide open access transportation, as it may only transport for specific authorized shippers, and thus it is not possible for a part 157 pipeline to engage in discrimination in favor of an affiliate. Hampshire and Northwest Natural urge the Commission to change the Standards' applicability to cover only those pipelines that operate under both parts 157 and 284.[18]

c. Commission Determination

15. The current Standards, as well as the proposed Standards, contain the word ''or'' instead of ''and'' in sections 358.1(a) and 358.3(k)(2). The fact that the Commission is returning to the employee functional approach used in Order No. 497 does not automatically mean, however, that it must resurrect all other aspects of Order No. 497. Each provision must be considered on a case-by-case basis. The Commission has evaluated the comments contending that part 157 pipelines should not be included in the ambit of section 358.1(a), and determines that their position is well-taken. Pipelines operating only under part 157 cannot discriminate in favor of an affiliate, because such pipelines can only transport for specific shippers authorized by their certificates. Put another way, in this Final Rule, we are concerned about the relationship between pipelines and their shippers where the pipelines are providing transportation service pursuant to part 284 blanket certificate authorization and open access rules, which give the pipelines the flexibility to discriminate in favor of their affiliates because they may commence and terminate service without *ex ante* review by market participants or the Commission. By contrast, the very few pipelines that are not part 284 open-access transporters must receive shipper-specific certificate authorization from the Commission, which must find the service is required by the public convenience and necessity under Section 7 of the Natural Gas Act. Accordingly, part 157 transporters do not have the flexibility that could lead to discriminating unduly in favor of their affiliates. The Commission will therefore eliminate the reference to part 157, leaving only interstate pipelines that transport gas for others pursuant to subparts B or G of part 284 subject to the Standards and within the scope of the definition of transmission provider. Accordingly, the Standards now apply to those pipelines subject to the Commission's open access rules under part 284.

2. Applicability to Pipelines With No Marketing Affiliate Transactions

a. Commission Proposal

16. The NOPR requested comment as to whether the statement of the Standards' applicability to interstate pipelines in section 358.1(a) should parallel the statement of the Standards' applicability to the electric industry set forth in section 358.1(b).[19] The language in question reads: ''and conducts transmission transactions with an affiliate that engages in marketing functions.''

b. Comments

17. INGAA asserts that the cited language is essential, because it exempts those pipelines with affiliates that have marketing function employees, but with which the pipeline conducts only non-transmission transactions. INGAA argues that these non-transmission transactions do not pose the potential for the types of abuse the rules seek to prevent. According to INGAA, the cited language also ensures that the proposed Standards operate within the boundaries set forth in *National Fuel*, by not extending coverage to relationships and transactions for which the Commission has no record evidence of undue discrimination or preference.[20]

18. NGSA argues that the limitation in the current language implies an exemption from the Standards for sales of gas in which the gas is not shipped using capacity held or controlled by the seller's affiliated transmission provider. NGSA urges the Commission to either: (i) Clarify that the No Conduit Rule (and the Standards generally) would nonetheless apply to such gas sellers when they share the same facilities or trading floor with marketing function employees who are not exempt from the Standards, or (ii) require entities that house exempt marketing function employees in the same facility as non-exempt marketing function employees to provide some physical separation between the two groups, to prevent uncontrolled flow of restricted information.[21]

19. While agreeing with INGAA, other commenters would apply the conditional language in section 358.1(a) to public utilities as well as pipelines, thereby limiting the Standards' application to both public utilities and interstate natural gas pipelines that conduct transportation transactions with marketing affiliates.[22]

c. Commission Determination

20. The Commission agrees with INGAA that there is no evidence in the record to suggest that pipelines that do not conduct transmission transactions with an affiliate engaged in marketing functions are in a position to engage in the type of affiliate abuse to which the Standards are directed. Therefore, the Commission will retain the language in section 358.1(a) that sets forth this limitation.

21. The Commission disagrees with NGSA's contention that certain sales of gas have, by implication, been made

[17] Hampshire Gas at 6–9; Northwest Natural at 3–7.

[18] *Id.*

[19] NOPR at P 58.

[20] INGAA at 9–12.

[21] NGSA Reply Comments at 12–14.

[22] Nisource at 25–28; DCP Midstream at 2; Southwest Gas at 18–20.

exempt. The Commission is not exempting any sales of gas; the Standards apply to conduct, not to products. Section 358.1 addresses which pipelines and which electric utilities fall within the ambit of the Standards. A pipeline may have some marketing affiliates with which it conducts transmission transactions, and some with which it does not. A pipeline that conducts transmission transactions with a marketing affiliate must comply with the Standards, including the No Conduit Rule.

22. If a pipeline has affiliates of both types (some with which it conducts transmission transactions and some with which it does not), the pipeline must ensure that there is no prohibited communication with marketing function employees, in accordance with the requirements of the No Conduit Rule. The pipeline can determine how best to ensure compliance with the regulation, and we decline to order physical separation of employees on a generic basis. We might consider it on a case-specific basis, however, in the event the Commission found a violation.[23]

23. The Commission agrees with those commenters that suggest parallelism between the electric and gas industries could be achieved by also applying to public utilities the limitation applicable to pipelines. Because the core abuse to which the Standards are directed is that of undue preference in favor of an affiliate (defined to include divisions of the transmission provider as well as separate corporate entities), a public utility that does not engage in any transmission transactions with a marketing affiliate should be excluded from the Standards' coverage, just as should a pipeline. Therefore, the Commission modifies the language of section 358.1(b) accordingly.

3. Commencement Date

a. Commission Proposal

24. The Commission proposed in section 358.8(a) that a transmission provider must comply with the Standards as of the earlier of the date it has a rate on file with the Commission or the date it commences transmission transactions.

b. Comments

25. INGAA and APGA disagree with the commencement date proposed in section 358.8(a). INGAA asserts that the Standards should not apply to a pipeline unless and until the pipeline engages in transportation transactions with a marketing or brokering affiliate. INGAA believes that proposed section 358.8(a) is inconsistent with the Standards' purpose of preventing preferential treatment and with proposed section 358.1(a), which applies the Standards only to pipelines conducting transmission transactions with an affiliate engaging in marketing functions.[24] Conversely, APGA would have the Standards apply to a newly-certificated pipeline as soon as the pipeline begins soliciting customers or negotiating contracts, rather than deferring compliance until such time as the pipeline commences transportation.[25]

c. Commission Determination

26. The Commission believes that INGAA's comments on this point are well-taken. Under section 358.1, a pipeline that does not conduct transmission transactions with an affiliate that engages in marketing functions need not comply with the Standards. In this Final Rule, we expand that same provision to apply to public utilities as well, as discussed above. Therefore, we will modify the effective date upon which a transmission provider must be in full compliance with the Standards to provide that a transmission provider must comply with the Standards on the date it commences transmission transactions with an affiliate that engages in marketing functions. See section 358.8(a).

4. Waivers From Coverage of the Standards

a. Commission Proposal

27. In the NOPR, the Commission did not address the issue of whether existing waivers from the Standards should apply to the new Standards.

b. Comments

28. Numerous commenters request that the Commission clarify that existing waivers from the application of the current Standards remain in effect upon finalization of this rulemaking, to the extent they remain relevant.[26] Questar further requests that exemptions and waivers granted under Order No. 2004 be functionally adapted to the rules as proposed in the NOPR.[27]

29. Northwest Natural requests that the Commission broaden existing waivers from ''partial'' to ''full'' for pipelines that provide transportation for a single affiliated shipper.[28] Similarly, USG believes that pipelines transporting gas only for affiliated shippers should be exempted from the rules. It recommends that the Commission either amend proposed section 358.1(a) to exclude pipelines that do not serve unaffiliated customers, amend the exceptions to the proposed definition of ''marketing functions,'' or grant USG and B–R Pipeline a waiver.[29]

30. With regards to the Commission's continued willingness to consider requests for waivers, Unitil seeks clarification that the Commission will continue to consider requests for waivers by entities that would have qualified for waivers under the requirements of Order Nos. 889, 497, or 2004.[30] TDU Systems supports the Commission's proposal to allow transmission owners who are members of RTOs and ISOs, do not operate or control their transmission facilities, and have no access to transmission function information, to request waivers from the Standards.[31]

c. Commission Determination

31. The Commission agrees that it would be both burdensome and unfair to require entities that have already received waivers from the Standards on a case-by-case basis to file their requests again. Therefore, existing waivers relating to the Standards shall continue in full force and effect.

32. The determination as to whether a waiver is appropriate for an entity that serves only a single, affiliated customer is best made on an individual basis. Any entity that believes it is entitled to a waiver may apply for one, and any entity that has already received a full or partial waiver may continue to rely upon it. This Final Rule is not the appropriate vehicle to grant or modify individual waivers for specific entities, as requested by Questar and USG. We note, however, that many of the waivers previously granted transmission providers may be rendered moot by the revisions made here to the Standards.

[23] *C.f., e.g., Southern Co. Serv. Inc.,* 117 FERC ¶ 61,021 (2006).

[24] INGAA at 58–61.

[25] APGA at 8–10.

[26] AGA at 26; INGAA at 61–62; New York PSC at 5–6; National Grid at 28–29; Northwest Natural at 6–7; Questar at 2; TDU Systems at 18; Unitil at 4–5. New York PSC adds that without such confirmation, existing sales activities authorized under the standing waivers may be disrupted at the expense of the public interest. New York PSC at 5. New York PSC offers the example of National Fuel Gas Distribution Corporation (NFGD), which it states received a waiver to make off-system sales from contract storage located on an affiliated pipeline system to marketers who resell that gas to NFGD's retail customer under a New York PSC-approved retail choice program. New York PSC states that uncertainty regarding status of the waiver may compel NFGD to terminate those sales. *Id.* at 5–6.

[27] Questar at 2.

[28] Northwest Natural at 7.

[29] USG at 10–12.

[30] Unitil at 4–5.

[31] TDU Systems at 17.

33. The Commission clarifies that nothing in this Final Rule precludes an entity from seeking a waiver. Indeed, section 358.1(d) specifically so provides. If an entity believes it is entitled to a waiver but has not yet applied for one, it is thus free to do so. The appropriateness of granting such a waiver will be based on the facts and circumstances of the individual case, examined in light of the specific provisions and stated principles of the Standards adopted in this Final Rule.

C. Independent Functioning Rule

34. In the NOPR, the Commission proposed to continue the policy, established in Order Nos. 497 and 889 and referred to as the Independent Functioning Rule, of requiring the transmission function employees of a transmission provider to function independently of the marketing employees of the transmission provider. However, the NOPR proposed eliminating the corporate separation approach to the Independent Functioning Rule, which was adopted in Order No. 2004, and replacing it with the employee functional approach previously utilized in Order Nos. 497 and 889. Under the NOPR proposal, the relevant consideration for purposes of applying the Independent Functioning Rule is the function performed by the employee himself (or herself). Thus, while under the current Standards *any* employee of a marketing or energy affiliate is prohibited from interacting with transmission function employees, the proposed Standards restricted the category of employees who must function independently from transmission function employees to those who actively and personally engage in marketing functions.

35. To implement this approach, the NOPR proposed definitions of certain key terms, the principal two being ''transmission functions'' and ''marketing functions.'' The definitions of ''transmission function employee,'' ''marketing function employee,'' ''transmission function information'' and ''marketing function information'' all keyed off these two core definitions.

36. Commenters generally approved of the NOPR approach, but raised certain concerns about the manner of its implementation and about the proposed definitions of terms. They also requested clarification on various matters. These topics are addressed below.

1. Transmission Functions

a. Commission Proposal

37. The NOPR proposed to define ''transmission functions'' as ''transmission system operations and the planning, directing, organizing or carrying out of transmission operations, including the granting and denying of transmission service requests.'' See proposed section 358.3(h).

b. Comments

38. ALCOA requests clarification that the word ''planning'' in the definition of transmission function applies only to planning associated with transmission operations. ALCOA proposes that the Commission refine the term ''planning,'' as used in this definition, so that it is limited to current, near-term and real-time operations, and requests that the Commission exclude long-range system planning.[32]

39. In asserting that the proposed definition of transmission functions is ambiguous, National Grid urges the Commission to adopt a more precise definition of ''transmission function'' that encompasses those activities that directly affect open access, *i.e.,* real-time control of the transmission system; planning of electric transmission facilities or expansions; and the receipt, processing and granting of transmission service requests.[33] For other functions that could reasonably be interpreted to relate to transmission, National Grid posits, the No-Conduit Rule will prevent abuses.[34] Furthermore, National Grid requests clarification of the scope of the phrases ''operations,'' ''transmission system operations,'' and ''transmission operations.'' [35]

c. Commission Determination

40. The proposed NOPR definition of ''transmission functions'' carries over the principal concepts contained in the existing definition of ''transmission function employee'' (there is no definition of the term ''transmission functions'' in the existing Standards). We agree, however, that additional language may be needed to clarify that the Commission intends the definition to apply to day-to-day operations, not long-range planning. Therefore, we will modify the definition in section 383.3(h) to read: ''the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests.'' This modification focuses the definition on those areas most susceptible to affiliate abuse. Furthermore, information about long-range activities, such as planned transmission lines, are likely already to be in the public sphere.[36] The definition we adopt in this Final Rule is directed at short-term real time operations, including those decisions made in advance of real time but directed at real time operations. To the extent the Commission's prior cases and No Action Letters are in accord with this principle, they may be consulted for guidance as to individual activities in question.

2. Transmission Function Employee

a. Commission Proposal

41. In the NOPR, the Commission proposed to define transmission function employee as: ''an employee, contractor, consultant or agent of a transmission provider who actively and personally engages in transmission functions.'' See proposed section 358.3(i).

b. Comments

42. Many commenters disagreed with the proposed classification of field, maintenance, and construction employees as ''transmission function employees'' [37] for a variety of reasons, including the fact that field employees do not actively and personally engage in system operations [38] and do not have access to transmission information.[39] Similarly, MidAmerican requests that the definition of transmission function employee expressly exclude the following categories: Engineers who plan, design and oversee construction of transmission facilities; construction workers who build transmission facilities; engineers who make engineering decisions regarding the operation and maintenance of transmission facilities; engineers who determine whether transmission

[32] ALCOA at 4.

[33] National Grid would exclude the planning of gas transmission from the scope of the definition because pipeline open seasons allow all interested parties to seek capacity in gas expansion projects; it states that such conversations therefore do not create concerns about preferential sharing of information. Alternatively, it suggests that the definition of transmission function could expressly exempt natural gas transmission planning discussions that involve projects subject to an open season. National Grid at 9–10.

[34] National Grid at 7–11.

[35] *Id.* at 9.

[36] Issues relating to long-range planning are governed by other Commission actions, such as in Order No. 890 for electric utilities and in the long-standing policies regarding open seasons subject to certificate policies for gas pipelines. *See, e.g., Gulf Crossing Pipeline Co., LLC,* 123 FERC ¶ 61,100 at P 105 (2008).

[37] ATC at 18; Dominion Resources at 14; EEI at 54; Puget Sound at 7–8; INGAA; Nisource; Southern Co. Services at 24–25.

[38] Southern Co. Services at 25.

[39] Puget Sound at 8.

requests can be accommodated by the existing transmission system; utility line workers who operate, repair and maintain transmission facilities according to orders; and clerical staff and mapping personnel who draw plans for and process communications about transmission facilities.[40]

43. To mirror the language in the preamble of the NOPR, Bonneville suggests that a transmission or marketing function employee be one who actively and personally engages in ''more than a *de minimis* amount of'' transmission or marketing functions.[41] In addition, E.ON seeks more clarity on the scope of the *de minimis* exception proposed in the preamble, so as to avoid contrasting interpretations by transmission providers.[42]

44. Wisconsin Electric is unclear as to whether the standards applicable to transmission function employees also apply to employees engaged in certain reliability functions. More specifically, Wisconsin Electric requests clarification that balancing authority employees are not transmission function employees or agents under the proposed rules.[43]

45. Commenters also raised concerns regarding the use of the phrase ''actively and personally engages.'' EEI requests that the Commission clarify that an employee is not ''actively and personally engaged'' in transmission or marketing functions so long as the employee is not engaged in such activities on a day-to-day basis. Furthermore, EEI believes that precedent under Order No. 889 regarding the ''day to day activities'' standard should continue to apply, except for certain precedent that undermined the ''day-to-day'' standard as it applied to officers.[44] Idaho Power requests that the Commission explain any difference between the term ''actively and personally engages in'' and the ''directing, organizing, or executing'' classification standard of Order No. 889.[45]

c. Commission Determination

46. The Commission agrees that field, maintenance and construction workers, as well as engineers and clerical workers, are not normally involved in the day-to-day operations of the transmission system. Therefore, they would not fall within the scope of the definition of transmission function employee, unless in addition to functioning in their stated capacity they also engaged in the day-to-day operation of the transmission system.

47. The Commission declines to add a further exclusion in the regulatory text for *de minimis* involvement. As discussed in the section on officers, directors and supervisors, the Commission has determined to add the phrase ''day-to-day'' to further clarify the scope of activity covered by the definition. This addition should capture the concerns of the commenters who requested inclusion of the phrase *de minimis*. However, as noted in the preamble of the NOPR, if a non-transmission function employee were pressed into service on an isolated occasion to perform a transmission function, perhaps under emergency conditions, such *de minimis* involvement would not convert him into a transmission function employee. The remote possibility that such a scenario would occur does not warrant adding exclusion language to the text, which would unduly elevate the exclusion and raise more questions than it answers.

48. Similarly, the question of whether balancing authority personnel are included in the definition of transmission function employees depends on the circumstances. If the transmission provider also serves as a balancing authority, and an employee's duties encompass both transmission provider and balancing authority activities, such an employee would be a transmission function employee (provided his or her duties are encompassed by the definition of transmission function employee). If, however, the two functions are separate, and the employee performs no duties outside of those specific to a balancing authority employee, he or she would not be considered a transmission function employee.

49. The phrase ''actively and personally'' applies to marketing function employees as well as transmission function employees, and its application arises most notably with respect to supervisory personnel. The comments relating to that phrase, and the Commission's determination with respect to it, are set forth below in the section entitled Supervisors, Managers and Corporate Executives.

3. Marketing Functions

a. Commission Proposal

50. The NOPR proposed defining marketing functions as ''the sale for resale in interstate commerce, or the submission of offers or bids to buy or sell natural gas or electric energy or capacity, demand response, virtual electric or gas supply or demand, or financial transmission rights in interstate commerce,'' subject to the following ''exemptions'':

(1) Bundled retail sales, including sales of electric energy made by providers of last resort (POLRs),

(2) Incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities,

(3) Sales of natural gas solely from the transmission provider's own production,

(4) Sales of natural gas solely from the transmission provider's own gathering or processing facilities, and

(5) Sales by an intrastate natural gas pipeline or local distribution company making an on-system sale.

b. Comments

51. Several commenters recommend that the Commission consider the differences between the electric and gas industries and adopt separate definitions of the term marketing functions for each of the industries.[46]

i. Electric Industry

52. Commenters from the electric industry raised concerns about the inclusion of ''bids to buy'' in the definition of marketing functions, and the effects of such inclusion on planning activities. Commenters also sought clarification and modification as to various individual components of the definition, and identified a number of issues regarding the bundled retail sales exemption and the inclusion of POLRs in that exemption.

(a) Bids to Buy and Other Terms Listed in the Definition

53. Dominion Resources believes that the definition, as it applies to the electric industry, should be limited to sales for resale or purchases for resale of electricity in interstate commerce,[47] while NiSource proposes limiting the definition to wholesale sales of electricity.[48] On the other hand, TAPS believes that the definition of marketing functions is too narrow, in that it only covers purchases that involve the ''submission of offers or bids to buy or sell.'' It argues that the definition of marketing functions should include purchases, as well as sales, for resale of energy, in order to ensure that all transmission provider activities in wholesale markets, including the purchase of electric energy, capacity,

[40] MidAmerican at 11–12.

[41] Bonneville at 4–5. *See also* AGA at 18.

[42] E.ON at 12–13.

[43] Wisconsin Electric at 6.

[44] EEI at 5–6, 11–12; Entergy at 2–3.

[45] Idaho Power at 6–7.

[46] INGAA at 14; NGSA at 10–11; Nisource at 10; AGA at 11–13; Williston at 3.

[47] Dominion Resources at 11–13.

[48] NiSource at 10.

and physical and financial transmission rights and other energy related products for bundled retail load, are covered by the Standards. TAPS requests that the proposed definition be modified to include purchases, regardless of whether they are accomplished through the submission of a bid or offer.[49]

54. Some commenters requested clarification of various terms used in the definition of marketing functions. First, commenters ask the Commission to clarify that the scope of the term ''demand response'' is limited to the bidding or supply of demand response in a FERC jurisdictional context, and does not cover the development of a retail customer demand response program or a balancing authority's dispatch of demand response for reliability.[50] Dominion Resources requests that the definition exclude regulated utilities demand/load response programs in their regulated service territories, as being part of their integrated resource planning.[51]

55. Second, commenters request clarification of the term ''capacity'' as used in the marketing functions definition. Dominion Resources and EEI request that the term refer to generation and not transmission capacity.[52] Some commenters seek further clarifications on other terms used in the definition of marketing functions. Dominion Resources and MidAmerican request that the Commission confirm that certain terms carry the same meaning in the Standards as they do in Commission-administered organized markets, or, alternatively, that the terms should be interpreted in a manner that limits the definition to activities that occur in interstate commerce. These terms include: (i) ''Virtual electric or gas supply or demand;'' (ii) ''financial transmission rights;'' (iii) ''offer'' or ''bid;'' (iv) ''demand response;'' and (v) ''bundled retail sales.''[53] Similarly, NiSource requests that the definition of marketing functions, as it applies to the natural gas industry, should exclude the terms demand response, virtual bids, and allocations of financial transmission rights.[54]

56. APPA and TAPS are concerned that the definition of marketing functions, although it includes financial transmission rights, excludes resale of a public utility transmission provider's physical electric system transmission rights. These commenters believe that the omission allows transmission provider employees engaging in such transmission activities to communicate with other personnel on a preferential basis regarding the availability of new firm transmission rights.[55] TAPS further asserts that the definition should include transmission reservations and scheduling of transmission.[56]

(b) Exclusions

57. Commenters express varying opinions on the proposed exclusion in section 358.3(c)(1) for ''bundled retail sales, including sales of electric energy made by providers of last resort (POLRs).'' National Grid and EEI generally supported the exemption.[57] National Grid recommends, however, that the proposed exemption be revised to read ''bundled retail sales or retail sales of electric energy made by providers of last resort,'' rather than treating POLR sales as a subset of bundled retail sales.[58] Ameren believes that the POLR exclusion should apply to all procurement or sale of energy by a POLR in support of its POLR function, and urges the Commission to clarify that incidental sales or purchases of energy by a POLR that benefit POLR customers who are required to meet reliability or RTO requirements are not activities within the scope of marketing functions, even if made on an unbundled basis.[59]

58. On the other hand, EPSA and TAPS both oppose a blanket exemption for POLRs.[60] TAPS asserts that the Commission has denied waivers to some affiliated POLRs in the past, and the waivers it has granted have been fact-specific.[61] TAPS likewise opposes a blanket exclusion for all bundled retail sales,[62] suggesting it be limited to cases in which the retail marketing function has been separated from the wholesale marketing function,[63] and EPSA would eliminate an exclusion both for POLRs and for all bundled retail sales insofar as the exclusion would apply to utilities engaged in both bundled retail sales and wholesale sales.[64] TAPS requests that the Commission clarify that the bundled retail sales exemption does not extend to activities of the transmission provider's merchant function.[65]

59. Many commenters request clarifications on the scope of the bundled retail sales exclusion. EEI requests that the Commission confirm that the exclusion covers purchases in support of retail sales only as long as the resale of excess purchased power is made by separate employees.[66] WA UTC urges the Commission to include in the exclusion the incidental wholesale power purchases and sales a utility serving bundled retail load must make to balance its variable output resources with variations in its actual bundled retail loads.[67]

60. Several commenters sought additional exclusions from the marketing functions definition as it applies to the electric industry. California PUC recommends that the Commission exclude from the marketing functions definition utility employees engaged in state-regulated activities, such as engaging in purchases necessary to serve bundled retail load or to meet the requirements of state-mandated programs, because these activities are overseen by state regulators.[68] MidAmerican asks the Commission to clarify that all planning personnel, whether or not engaged in state-mandated integrated resource planning, be excluded from the definition of marketing functions.[69]

61. LPPC requests that the definition of marketing functions expressly exclude electricity exchanges, arguing they are often necessary to accomplish a transmission transaction, such as when access to renewable sources of power requires crossing multiple systems.[70]

ii. Natural Gas Industry

62. Commenters from the natural gas industry raised concerns about the inclusion of ''bids to buy'' in the definition of marketing functions, as had commenters from the electric industry. They also seek modifications of existing exclusions and the addition of new exclusions, and request clarification as to whether various activities that arise in the gas industry are encompassed by the definition.

[49] TAPS at 11–14.

[50] Arizona PSC at 6; EEI at 48; SCE at 8–9; Western Utilities at 10.

[51] Dominion Resources at 12–13.

[52] *Id.* at 12; EEI at 49.

[53] Dominion Resources at 12; MidAmerican at 9–10.

[54] NiSource at 10–11.

[55] APPA at 6–9; TAPS at 28–31.

[56] TAPS at 30.

[57] National Grid at 12–13; EEI at 34.

[58] National Grid at 12–13.

[59] Ameren at 22–24.

[60] EPSA at 6–8; TAPS at 26–28.

[61] TAPS at 26–27.

[62] *Id.* at 15–25.

[63] *Id.*

[64] EPSA at 7–8.

[65] TAPS at 25–26.

[66] EEI at 34.

[67] WA UTC at 8–10.

[68] California PUC at 10. California PUC also asks the Commission not to exempt any interactions between a utility's transmission function employees and the employees of a utility's unregulated affiliates, on the grounds that state regulators do not oversee the activities of a utility's unregulated affiliates. *Id.*

[69] MidAmerican at 8–9.

[70] LPPC at 15–16.

(a) Bids To Buy and Other Terms Listed in the Definition

63. Many commenters believe that purchases should be excluded from the definition of marketing functions as it applies to the natural gas industry, arguing that their inclusion would extend the Standards beyond the limits set by *National Fuel.*[71] Southwest Gas requests that the Commission clarify that the definition of marketing functions covers only the sale of gas in interstate commerce,[72] and AGA and Dominion Resources request that marketing functions be defined in terms of natural gas sales for resale in interstate commerce.[73] AGA and Southwest Gas believe this approach appropriately excludes natural gas hedging activities.[74] NGSA, rather than deleting purchases from the definition itself, requests that purchase be included in the exclusions to the definition in proposed sections 358.3(c)(3–5).[75]

64. Several commenters believe that the phrase ''natural gas or electric energy or capacity'' is ambiguous as to whether it encompasses natural gas capacity, which they argue should not be included in the definition.[76] NGSA believes that an extension of the concept to natural gas is not supported and is unnecessary due to the extensive regulations governing pipeline capacity marketing.[77] Southwest Gas requests that, if the Commission intends to include pipeline capacity in the definition, it amend proposed section 358.3(c)(5) to expressly exempt a purchase or release of interstate pipeline capacity by a local distribution company (LDC).[78]

(b) Exclusions

65. With respect to the exclusion for bundled retail sales, New York PSC requests that the Commission add to the exclusion the purchasing of natural gas to make such sales.[79]

66. With respect to the exclusions for sales of gas from one's own production or from one's own gathering or processing facilities, some commenters assert that these exclusions have been narrowed from the prior Standards without explanation. First, commenters observe that proposed sections 358.3(c)(3) and (c)(4) exclude sales of natural gas from a transmission provider's *own* production, gathering or processing facilities, whereas the prior Standards extended the exclusion to also include sales of natural gas from gathering and processing facilities that are owned by the transmission provider's affiliate.[80] INGAA finds no reason to distinguish between a transmission provider's directly and indirectly owned gathering and processing facilities. INGAA and others request that these proposed exclusions be modified to encompass sales and purchases of gas from the production, gathering or processing facilities owned by either a transmission provider or its affiliate.[81]

67. Calypso urges the Commission either to clarify that the term ''transmission provider's own production'' encompasses a transmission provider's foreign-sourced natural gas, or that the Commission extend the exclusion to cover such gas.[82]

68. With respect to the exclusion for sales by an intrastate natural gas pipeline or LDC making an on-system sale, some commenters would expand the exclusion to cover sales by LDCs that are off-system but entered into with non-affiliated pipelines,[83] to exclude intrastate and Hinshaw pipelines that must buy enough gas to meet predicted peak loads and sometimes must make off-system sales when circumstances create surpluses,[84] and to exclude 7(f) companies, arguing the Commission recognized in Order No. 2004 that there is no reason to treat 7(f) companies differently than LDCs with respect to this exclusion.[85] Alternatively, to the extent the Commission believes exclusion of additional sales would create a potential area of abuse, INGAA recommends that the transactions be evaluated on a case-by-case basis.[86] On the other hand, AGA disapproves of the proposed exclusion, because it believes it creates potential for abuse and is inconsistent with the NGA's prohibition against undue discrimination.[87] Southwest Gas believes that Hinshaw pipelines should be excluded from the Standards altogether, arguing that doing so would be consistent with Order No. 497 and the Commission's treatment of Hinshaw pipelines as LDCs under the NGPA.[88]

69. INGAA and Unitil also object that certain sales by LDCs, intrastate pipelines and other shippers necessary to maintain balances are captured in the proposed definition of marketing functions, and argue that Order No. 2004 excluded these sales as operational through the concept of energy affiliates. INGAA believes the Commission should restore this exclusion.[89] Unitil argues further that Order No. 2004–A excluded from the Standards *de minimis* off-system sales related to an LDC's balancing requirements.[90]

70. Questar requests that exchanges of gas for the purpose of reducing transmission costs be excluded from the definition of marketing functions.[91]

71. Commenters contend that, as proposed, the Standards may be read to cover a natural gas pipeline's relationship with its electric marketing affiliates or employees, or with its other employees who are not making sales of natural gas.[92] As remedies, MidAmerican proposes to exclude the activities of an LDC, including those affiliated with an electric transmission provider,[93] and TDU Systems proposes to remove from the definition of marketing functions the purchase or sale of natural gas by an electric transmission provider.[94]

(c) Clarifications

72. Several commenters raise concerns that, as proposed, the NOPR would apply the Standards to a pipeline's relationship with affiliates that do not hold capacity on the affiliate pipeline.[95] These commenters request that the Commission clarify that the Standards apply only to the relationship between the pipeline and affiliates that hold or control capacity on the affiliate pipeline.

73. Spectra asks the Commission to clarify that the definition of marketing functions excludes affiliated foreign pipelines that either do not participate

[71] Salt River at 7–9; INGAA at 14; Nisource at 10.

[72] Southwest Gas at 5–9.

[73] AGA at 12–13; Dominion Resources at 7–8.

[74] AGA at 12–13; Southwest Gas at 14–15. Southwest Gas further requests confirmation that the proposed definition reflect its view that financial transactions designed to hedge price risk associated with on-system retail sales are an important tool for an LDC's provision of economical retail sales service, citing to Order No. 2004–C. *Id.*

[75] NGSA at 13.

[76] National Grid at 11–12; NGSA at 9–11; Williston at 13–14; Southwest Gas at 16–17.

[77] NGSA at 11–13.

[78] Southwest Gas at 16–17.

[79] New York PSC at 3.

[80] INGAA at 15; NGSA at 14–15; Williston at 14–15.

[81] *Id.*

[82] Calypso at 2–4.

[83] INGAA at 18–19; SCANA at 3–4; AGA at 14–15; National Grid at 13–14; New York PSC at 3–4; Northwest Natural at 7–8; Dominion Resources at 8; Duke at 8–9; Southwest Gas at 12–13.

[84] INGAA at 18–19; SCANA at 3–4.

[85] Southwest Gas at 18.

[86] INGAA at 20.

[87] AGA at 5–8.

[88] Southwest Gas at 17–18.

[89] *INGAA* at 16–17.

[90] Until at 6–7.

[91] Questar at 4–5.

[92] INGAA at 14; MidAmerican at 16–18; TDU Systems at 14–15.

[93] MidAmerican at 16–18.

[94] TDU Systems at 14–15.

[95] INGAA at 17–18; USG at 7–10; Spectra at 5–7; PSEG at 10–11; AGA at 14–16.

in the U.S. energy markets or that are interconnected with U.S. pipelines, but are subject to a foreign country's regulation, stating that the current Standards exclude them from the definition of energy affiliate.[96]

74. SCANA requests clarification that if an LDC sells gas to an asset manager in connection with establishing an asset management arrangement for its off-system sales, the LDC is not engaging in a marketing function or compromising its supposed status as an entity exempt from the Standards.[97]

c. Commission Determination

75. The definition of ''marketing functions'' was designed to encompass both the electric and gas industries, as do the Standards as a whole. The list of activities in proposed section 358.3(c) therefore listed concepts that are not only applicable to both industries, but also concepts applicable to one or the other. For instance, virtual bidding is currently limited to the electric industry, as are financial transmission rights. The many requests for clarification by commenters, however, suggest this combined definition is confusing, exacerbated by the fact that some concepts have different meanings in the two industries, such as the word ''capacity.'' Therefore, in order to avoid any further confusion regarding such matters, the Commission agrees with those commenters who request separate definitions for the electric and gas industries, and modifies the regulatory text at section 358.3(c) to so provide. We also clarify several of the terms used in the definitions, as requested by commenters, and discuss separately below other issues pertaining to the electric or gas industries.

i. Electric Industry

76. Besides modifying section 358.3(c) to provide a separate definition of marketing functions for public utilities and their affiliates, the Commission revises the definition to read as follows: ''the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales of electric energy made by providers of last resort (POLRs) acting in their POLR capacity.'' See section 358.3(c)(1).

(a) Bids To Buy and Other Terms Listed in the Definition

77. Importantly, in addition to separating electric from gas, this definition removes ''bids to buy'' from the category of marketing functions. Many commenters requested this exclusion, for reasons that include the jurisdictional reach of the Commission and *National Fuel* concerns. The Commission agrees that restricting the definition of marketing functions to include only sales, rather than purchases, more closely matches the statutory prohibitions against undue preferences.[98] Furthermore, the removal of purchases from the definition of marketing functions frees companies to conduct the informational exchanges necessary to engage in integrated resource planning,[99] and eliminates the difficulties which might otherwise be experienced by executive personnel who have overall procurement responsibilities that include both transmission and marketing. At the same time, it preserves protection against affiliate abuse, as it is those employees who are making wholesale *sales* of electricity, not purchases, who can improperly benefit from transmission function information obtained from the affiliated transmission provider. (The issue of long-range planning is discussed more fully below in the section entitled Long-Range Planning and Procurement.) It also addresses the concern of California PUC that purchases of power to serve bundled retail load or to meet the requirements of state-mandated programs should not be considered marketing functions.

78. The Commission also clarifies what is meant by certain of the categories listed within the definition of marketing functions, or that are subsumed in the categories listed. The Commission clarifies that inclusion of the term ''demand response'' in this definition is not intended to interfere with demand response programs that a load-serving entity (LSE) has established for its customers.[100] Confusion over the terms ''capacity,'' ''virtual'' and ''financial transmission rights'' are eliminated by restricting their application to the electric industry. The Commission also agrees with APPA and TAPS that inasmuch as physical as well as financial transmission rights may be sold by marketing function employees, physical transmission rights should be added to the definition of marketing functions, and so modifies the regulatory text. Ancillary services, when referring to sales for resale as opposed to an integrated public utility's actions in calling on its own generation or demand response resources for ancillary services purposes, are included within the definition of marketing functions as sales for resale either of generation or demand response. For example, a number of RTOs and ISOs have established or are in the process of establishing ancillary services markets, and sales into these markets would fall within the definition of marketing functions.[101]

79. We decline to grant APPA's and TAPS's further request that we add to the definition of marketing functions both the making of transmission reservations and the scheduling of transmission. These activities are beyond the scope of electric energy sales. However, we note that marketing function employees making sales of energy will need to schedule transmission for such sales (at least outside of organized electric energy markets), and thus those individuals will most likely already fall within the definition of marketing function employees and within the scope of the Independent Functioning Rule.

(b) Exclusions

80. Some commenters objected to the proposed inclusion of POLRs in the exclusion for bundled retail sales, while others suggested the exclusion should be broader and encompass all procurement or sales by a POLR in support of its POLR function. As the Commission explained in the NOPR, actual instances of abuse in this regard have not been presented, even though entities have been granted waivers to exempt their POLR activities from the

[96] Spectra at 7–8.

[97] SCANA at 3–6.

[98] Statutory coverage encompasses any transmission or sale of electric energy subject to the Commission's jurisdiction, and any transportation or sale of natural gas subject to the Commission's jurisdiction; sales subject to the Commission's jurisdiction being sales for resale in interstate commerce. Sections 205 and 206 of the Federal Power Act (FPA), 16 U.S.C. 824d–824e (2000), Sections 4 and 5 of the Natural Gas Act (NGA), 15 U.S.C. 717c–717d (2000).

[99] Many commenters requested that long-range planning be excluded from the scope of the Standards. Comments on this topic are set forth below in the section entitled Long-Range Planning and Procurement.

[100] If concerns remain despite this clarification, interested persons may present them to the Commission on a case-by-case basis.

[101] *See, e.g., Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,172 (2008), *reh'g granted in part and denied in part and clarification granted*, 123 FERC ¶ 61,297 (2008); *New England Power Pool*, 115 FERC ¶ 61,175 (2006), *reh'g denied*, 117 FERC ¶ 61,106 (2006); *Atlantic City Electric Company*, 86 FERC ¶ 61,248 (1999), *clarification granted*, 86 FERC ¶ 61,310 (1999).

Standards.[102] Inasmuch as entities acting as POLRs are providing bundled retail service, it is appropriate to include POLR sales in the definition of bundled retail sales. However, we decline to extend the exclusion to cover all procurement or sale of energy by a POLR in support of its POLR function, as requested by Ameren. POLRs should not have special exclusions not shared by other providers of bundled retail service. (However, we note that insofar as Ameren is concerned about *procurement* of energy for POLR purposes, that concern is mooted by our removal of purchases from the definition of marketing functions.) We also decline Ameren's request to exclude incidental sales of energy by a POLR. Public utilities serving retail load often make off-system wholesale sales, which are not covered by the exclusions for bundled retail sales and which are susceptible to affiliate abuse. Likewise, off-system wholesale sales made by POLRs should not be excluded. Furthermore, activities made by a POLR that is not acting within its POLR capacity are not covered by the exclusion.

81. We also decline to extend the exclusion for bundled retail sales to include incidental off-system sales by a utility serving bundled retail load, as requested by WA UTC. Once the utility is making wholesale sales off-system, it is no longer serving retail load but engaging in marketing transactions, and should be treated no differently than other marketers making wholesale sales. Otherwise, a utility could purchase quantities of power excess to its needs and then sell the power off-system, free of the restrictions pertaining to marketing function employees that are imposed by the Standards.

82. The Commission also declines to grant LPPC's request that exchanges of electricity designed to work around scarce transmission should be excluded from the definition of marketing functions. It is not always obvious whether such exchanges should be classified as transmission or as the purchase and sale of generation. The determination of that question often turns on the specifics of the transactions in question,[103] making a blanket exclusion inappropriate. An entity seeking guidance for its individual situation may file for a waiver or pursue other means of resolution, such as a No Action Letter or a General Counsel opinion letter.[104] Further, as noted with respect to Ameren's request regarding POLR purchases and sales, to the extent such exchanges involve purchases, those purchases are not included in the definition of marketing functions which we adopt in this Final Rule.

ii. Natural Gas Industry

83. In accordance with our determination to provide separate definitions for the electric and gas industries, the Commission adopts the following definition of marketing functions for pipelines and their affiliates: ''the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of natural gas, subject to the following exclusions: (i) Bundled retail sales, (ii) Incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities, (iii) Sales of natural gas solely from a seller's own production, (iv) Sales of natural gas solely from a seller's own gathering or processing facilities, and (v) Sales by an intrastate natural gas pipeline, by a Hinshaw pipeline exempt from the Natural Gas Act, or by a local distribution company making an on-system sale.'' This revised definition reflects our response to the various requests made by the commenters pertaining to the natural gas aspects of the definition of marketing functions, as discussed below.

(a) Bids to Buy and Other Terms Listed in the Definition

84. The major alteration in the definition from that proposed in the NOPR is the elimination of ''bids to buy.'' As with the case of the electric industry, this elimination will address jurisdictional and *National Fuel* concerns.

85. The Commission agrees with the commenters who contend that ''capacity'' is a term that should be confined to the electric industry insofar as the definition of marketing functions is concerned; that in fact had been the intent of the NOPR. Accordingly, the term is removed from the gas specific definition.

(b) Exclusions

86. New York PSC's requested clarification, regarding whether the exclusion for bundled retail sales should include the purchase of natural gas to make such sales, has been rendered unnecessary by the Commission's determination to exclude purchases from the definition of marketing functions.

87. The Commission agrees with INGAA's observation that in the reworking of the regulatory text, the NOPR inadvertently limited two of the existing exclusions applicable to sales from a *transmission provider's* production or gathering or processing facilities, thus not also encompassing sales from an *affiliate's* production or gathering or processing facilities. Exclusions (iii) and (iv) should not focus on the transmission provider but on the seller. Therefore, we modify exclusion (iii) to read ''sales of natural gas solely from a seller's own production,'' and exclusion (iv) to read ''sales of natural gas solely from a seller's own gathering or processing facilities.''

88. The Commission also agrees with Calypso's request for clarification that foreign-sourced gas be included in the exclusion for sales of natural gas from an entity's own production. Whether the gas is foreign or domestic, the operative consideration is whether it is from the entity's own production.

89. The Commission likewise grants Spectra's request for confirmation that sales by foreign LDCs are covered by the exclusion for sales by an intrastate natural gas pipeline or local distribution company making an on-system sale.

90. In regard to Southwest Gas' request for a similar clarification regarding Hinshaw pipelines, the Commission determines that exclusion (v) for intrastate pipelines should also apply to Hinshaw pipelines,[105] which are exempted from coverage under section 1(c) of the NGA,[106] and modifies the wording of the exclusion accordingly.

91. Several commenters request that the Commission add a new exclusion to the definition of marketing functions, to encompass off-system sales by LDCs on non-affiliated pipelines. The Commission declines to do so. If the LDC in question makes sales of gas off-system for resale, that sale qualifies as a marketing function. As discussed above, however, if a pipeline does not conduct transmission transactions with an affiliate that engages in marketing functions, it is not subject to the Standards under section 358.1(a).

[102] *See High Island Offshore System, L.L.C.*, 116 FERC ¶ 61,047 (2006); *Cinergy Services Inc.*, 111 FERC ¶ 61,512 (2005); *Exelon Corp.*, 123 FERC ¶ 61,167 (2008).

[103] *See, e.g., Utah Assoc. Mun. Power Sys.*, 83 FERC ¶ 61,337 (1998); *El Paso Elec. Co.*, 115 FERC ¶ 61,312 (2006).

[104] A comprehensive discussion of the various sources of guidance available from the Commission and its staff is set forth in our recent Interpretative Order Modifying No-Action Letter Process and Reviewing Other Mechanisms for Obtaining Guidance. *See Obtaining Guidance on Regulatory Requirements*, 123 FERC ¶ 61,157 (2008).

[105] Hinshaw pipelines are interstate pipelines in which all the gas is consumed within one state and the pipeline is subject to regulation by a state commission.

[106] 15 U.S.C. 1(c) (2006).

Therefore, if the LDC in question does not conduct transmission transactions with an affiliated interstate pipeline, its off-system sales on an unaffiliated pipeline are irrelevant insofar as the Standards are concerned. In support of its request for this new exclusion, AGA cites Order No. 497–A and a waiver granted to National Fuel Gas Supply Corporation in 1993.[107] In Order No. 497–A, however, the Commission affirmatively stated that when a pipeline or LDC sells gas off-system, it is a marketer of that gas within the scope of the rule.[108] The referenced waiver addressed the issue of applicability, not the definition of marketing, pointing out that a pipeline that does not conduct transportation transactions with its affiliated marketer is not subject to the Standards.[109] It is thus inapposite to AGA's point (and in accord with our observation above on applicability).

92. Similarly, several commenters express concern that the definition of marketing functions may sweep within its scope LDCs that do not sell gas from capacity held or controlled by them on their affiliated pipeline. As discussed above, the Standards do not apply to pipelines that do not conduct transmission transactions with an affiliate that engages in marketing functions, and such pipelines therefore need not concern themselves with the definition.

93. Questar's request that exchanges of gas for the purpose of reducing transportation costs be excluded from the definition of marketing functions [110] is the analog on the gas side of LPPC's request concerning exchanges on the electric side, and the same reasoning and result apply. However, we note that the procurement of gas during the exchange would not be covered by the definition of marketing functions, inasmuch as purchases are no longer included. This also applies to the situation in which the receipt of a ''field exchange'' serves to supply on-system bundled retail customers.[111]

(c) Clarifications

94. Spectra contends that a foreign entity that does not participate in United States energy markets had been excluded from the definition of energy affiliate, and requests that such exclusion continue to apply. The revised Standards have discarded the concept of energy affiliate, so there is no need to address Spectra's request. As to whether such an entity would be subject to the Standards, section 358.1 controls the question of applicability, as discussed above.

95. INGAA and SCANA request that not only should on-system sales by LDCs be excluded from the definition of marketing functions, but off-system sales should be as well, on the grounds such sales are entered into by non-marketing affiliates. However, the categorization of the affiliate is immaterial. If employees of an LDC make an off-system sale for resale in interstate commerce, they qualify as marketing function employees (assuming they are employed by a marketing affiliate of a transmission provider with which the affiliate conducts transmission transactions).

96. INGAA's and other commenters' contention that a pipeline should only be concerned with interactions with its gas marketing function employees, not with affiliated electric marketing function employees, is misplaced (or has been subsumed in the exclusion of energy affiliate from coverage of the Standards). Gas marketing function employees would not be making a sale for resale to electric marketing function employees, who would be purchasing the gas for consumption and thus in a retail capacity. Therefore, the definition of marketing function would not be triggered.

97. SCANA inquires whether pipelines and LDCs may remove themselves from coverage of the Standards by contracting with asset managers to make their off-system sales, and Southwest Gas requests clarification regarding the definition of ''marketing function employees'' in relation to asset management agreements. The Commission clarifies that under the Independent Functioning Rule and the No Conduit Rule, it would be the employees of the asset manager, acting as agents or contractors for the pipeline or LDC, rather than employees of the pipeline or LDC, who would qualify as marketing function employees after the asset arrangement was consummated, inasmuch as they would be the persons making all the subsequent sales for resale. The inclusion of agents and contractors in the definition of transmission function employee or marketing function employee is discussed in more detail below in the section entitled Elimination of Shared Employees Concept.

4. Marketing Function Employee

a. Commission Proposal

98. The NOPR proposed defining a marketing function employee as ''an employee, contractor, consultant or agent of a transmission provider or of an affiliate of a transmission provider who actively and personally engages in marketing functions.'' See proposed section 358.3(d).

b. Comments

99. Xcel seeks clarification as to whether the employees who purchase natural gas and interstate pipeline capacity to deliver fuel to the utility's electric generation fleet are marketing function employees under the revised definition.[112]

100. Several commenters request amendments to the definition of marketing function employees that would limit its application. AGA, Destin, and EPSA recommend that the Commission limit the definition of a marketing function employee to employees who actively and personally engage in marketing functions ''involving an affiliated transmission provider'' to ensure that the Standards are narrowly directed at the activities that give rise to concerns of undue preference.[113] EPSA would also include employees who engage in marketing functions on behalf of a transmission provider located within its affiliated transmission provider's electric control area.[114]

101. Other commenters request clarifications regarding which employees are included in the definition of marketing function employees. Arizona PSC suggests that the employees who perform competitive solicitations should not be categorized as marketing function employees, because their inclusion may unnecessarily limit their ability to obtain the non-public transmission function information necessary to make competitive solicitations as efficient and cost effective as possible.[115] MidAmerican seeks clarification that generator operating personnel are not a subcategory of marketing function employees.[116] Finally, EEI seeks clarification on which types of ''analysts,'' such as forecasters and employees who coordinate strategic planning and regulatory services, would

[107] AGA at 14–15, citing Order No. 497–A at p. 31,592 and *Nat'l Fuel Gas Supply Corp.*, 64 FERC ¶ 61,192 (1993).

[108] Order No. 497–A at p. 31,592.

[109] *Id.* p. 31,590–91.

[110] Questar at 4–5.

[111] A field exchange is the exchange of natural gas in the field from company-owned production for equivalent quantities of gas that is closer to the entity's distribution system, made to lower the delivered costs of gas for on-system retail sales. *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243 (2004) at P 179.

[112] Xcel at 20–21.

[113] AGA at 16; Destin at 8; EPSA at 6.

[114] EPSA at 6.

[115] Arizona PSC at 5.

[116] MidAmerican at 7.

be considered marketing function employees under the proposed rule.[117]

c. Commission Determination

102. The Commission adopts the proposed definition of marketing function employee in section 358.3(d), with the addition of the adverbial phrase ''on a day-to-day basis.'' A discussion of the comments which prompted this addition is set forth in the section on Supervisors, Managers and Corporate Executives. In this section, we address the other concerns of commenters with respect to the definition.

103. Xcel's requested clarification as to whether employees who purchase natural gas for their electric fleet are marketing function employees is rendered moot inasmuch as we have deleted purchases from the definition of marketing functions, and such employees would thus not be marketing function employees. (Furthermore, such a purchase would be one made at retail, rather than wholesale, and thus not subject to the definition of marketing function for that reason as well.)

104. We decline to limit the definition of marketing function employee by adding a requirement that the employee be engaged in marketing functions ''involving an affiliated transmission provider.'' An employee making off-system sales could potentially use non-public transmission function information to its advantage. However, as described in more detail above, if a transmission provider does not conduct any transmission transactions with an affiliate that engages in marketing functions, it does not fall within the scope of the Standards under section 358.1.

105. EPSA's concerns regarding the definition of marketing function employee in relation to transactions with affiliates that do not conduct transmission transactions with their affiliated transmission provider within the latter's electric control area mixes two unrelated concepts. Whether a transmission provider conducts transmission transactions with a marketing affiliate governs the question of the applicability of the Standards under section 358.1, not the definition of marketing function employee. If a transmission provider does not fall within the scope of the Standards under that provision, it need not concern itself with the definitions relating to the Standards' proscribed activities.

106. Arizona PSC's concerns regarding competitive solicitations are resolved by the removal of purchases from the definition of marketing functions. We also clarify, in response to Arizona PSC's request, that generating operator personnel are not marketing function employees, unless they also engage in marketing functions. The question of whether analysts (such as forecasters and employees who coordinate strategic planning and regulatory services) are marketing function employees can be answered by reference to the definition itself. If such analysts are not actively and personally involved on a day-to-day basis in the sale for resale of electric energy (or the other items mentioned in the definition), they are not marketing function employees.

5. Supervisors, Managers and Corporate Executives

a. Commission Proposal

107. The second sentence of the proposed NOPR definitions of transmission function employee and marketing function employee stated that an officer, director or other supervisory employee is not considered to be a transmission function or marketing function employee if he or she does not actively and personally engage in transmission or marketing functions. See proposed sections 358.3(d) and (i).

b. Comments

108. Concerns surrounding whether officers, directors or supervisors could be classified as marketing or transmission function employees generated many comments, more than on almost any other issue. Many commenters agree with the NOPR formulation that officers, directors and other supervisory employees that do not ''actively and personally engage'' in marketing or transmission functions should be exempted from the definition of a marketing function employee or transmission function employee.[118] Idaho Power, on the other hand, asserts that the explicit carve-out of officers, directors and other supervisors who do not ''actively and personally engage'' in the functions is redundant and therefore superfluous.[119]

109. Some commenters raise concerns about the application of the ''actively and personally engaged'' standard to different types of corporations. Salt River, for example, requests clarification that high-level officials of vertically integrated utilities will not be deemed either transmission or marketing function employees for approving department budgets or signing large value contracts.[120] In addition, INGAA requests guidance on how to apply the definitions of transmission and marketing function employees to organizations of varying sizes and structure, considering the different levels of involvement that supervisory employees must have depending on the size of the organization.[121]

110. Several commenters recommended alternative approaches to determine whether officers, directors or other supervisory employees should be classified as marketing or transmission function employees. For example, many commenters requested that the Commission re-introduce the concept of ''day-to-day'' involvement, used in Order No. 2004, to make the distinction between an ''employee'' and a supervisor or executive.[122]

111. National Grid, however, suggests using a corporate governance approach to make the distinction, as follows: Managers and employees negotiating deals and undertaking certain activities would fall within the definition of transmission or marketing function employee; senior executives and members of risk management committees who oversee the managers and employees would not.[123] Vectren believes that any confusion might be eliminated by deleting ''supervisory'' from the proposed definition.[124]

112. Numerous commenters seek additional guidance on the *de minimis* language used in the preamble of the NOPR.[125] Commenters object that the NOPR guidance regarding *de minimis* involvement does not indicate what amount and kind of activity exceeds the threshold. They request a more precise discussion with specific activities that would require classifying the employee as either marketing or transmission.[126] Both Idaho Power and Bonneville request that the Commission include the *de minimis* language directly in the

[117] EEI at 49.

[118] *See* AGA at 18, Ameren at 20–22, Duke at 4–5; SCE at 9–10; Vectren at 3–4; INGAA at 21.

[119] Idaho Power at 7–8.

[120] Salt River at 10–14.

[121] INGAA at 33.

[122] NGSA at 25–28; Southern Co. Services at 15–20; LPPC at 13. Southern Co. Services further requests the Commission to eliminate what it regards as the confusing precedent regarding the treatment of shared officers set forth in *Ameren Serv. Co.,* 87 FERC ¶ 61,145 (1999). Southern Co. Services at 15–20.

[123] INGAA also comments on the status of risk management personnel in the context of the concept of ''shared employees.'' INGAA at 36–40.

[124] TDU Systems at 10.

[125] EPSA at 6; Idaho Power at 7; MidAmerican at 12; National Grid at 17, PG&E at 16–18; Puget Sound at 4–6.

[126] Idaho Power at 7; NGSA at 5, National Grid at 17, PG&E at 16–18; Puget Sound at 4–6. INGAA requests a list of factors the Commission will consider in evaluating whether a particular employee qualifies as a marketing or transmission function employee. INGAA at 25–28.

regulatory text and provide guidance as to its meaning.[127]

113. Commenters also requested further guidance from the Commission as to which type of conduct would classify a supervisory employee as actively and personally engaged in one of these functions.[128] Many of these commenters seek assurance from the Commission that officers, directors and other supervisory employees will not be classified as marketing or transmission function employees by fulfilling their fiduciary duties and informing themselves of business operations.[129] Southern Co. Services is concerned that some may construe the ''actively and personally engaged'' standard to be the same as the standard used to determine professional conflicts of interest, which would inhibit effective corporate governance.[130]

114. Commenters request that the Commission confirm that if an officer, director, or other supervisory employee engages in the following activities, they will not be classified as marketing or transmission function employees. These activities include (i) passive involvement in contracting, so long as employees do not take an active role in the decision-making process and do not disclose non-public transmission information; [131] (ii) occasional participation in routine customer meetings; [132] (iii) executing and/or approving large wholesale sales or purchase agreements consistent with the officer's delegated approval authority and fiduciary obligations on behalf of the company; [133] and (iv) participating in the formulation of an overall wholesale strategy for a utility, and establishing general parameters for negotiation of wholesale contracts.[134] Similarly, MidAmerican requests that the definition clarify that it excludes officers and personnel who do not have first line reporting relationships with transmission or marketing function personnel.[135]

115. Instead of specifically addressing each type of conduct, INGAA recommends that the Commission adopts a rule of reason approach to determining, on a case-by-case basis, whether or not an executive's or supervisor's conduct was a good faith attempt to fulfill his corporate responsibilities.[136]

c. Commission Determination

116. In an effort to provide clarity in this area, which has long been the subject of much discussion and concern, the Commission in the NOPR included a second sentence in the definition of both transmission and marketing function employees that specifically addressed corporate executives and supervisory personnel. The proposed sentence provided that such employees were not considered to be transmission or marketing function employees if they were not actively and personally engaged in such functions, and was included to provide reassurance to officers, directors and supervisors that a mere oversight role did not render them transmission or marketing function employees. As Idaho Power points out, however, the sentence is redundant, as no employee, contractor or agent not so engaged is considered to be a transmission or marketing function employee. Therefore, we delete the sentence from the definitions of transmission and marketing function employees.

117. The Commission's intention in introducing the phrase ''actively and personally engaged,'' which is retained in the first sentence of each definition, was similar to that implicit in use of the phrase ''day-to-day.'' [137] The concept underlying both is simply this: If an employee regularly carries out or supervises the details of the activities in question, he or she is actively and personally engaged in them; if he or she merely signs off on the activities without having directed or organized the activities, he or she is not personally engaged in them. Thus, for example, supervisors who are not involved in the negotiation of a gas or electric energy sale, and who do not oversee or provide input into the details of the negotiations being carried out by another employee (e.g., by editing and revising material elements of a contract), but rather simply approve the contract governing the sale, are not marketing function employees. Furthermore, as we noted in the preamble of the NOPR, *de minimis* involvement in transmission and marketing functions will not render a person a transmission or marketing function employee. Therefore, a supervisor who on rare occasions has tangential involvement in a negotiation, such as being called in to meet the negotiating parties from the other side, is not thereby rendered a marketing function employee.

118. That said, the Commission will add the phrase ''day-to-day'' to the definition of transmission and marketing function employees, in order to provide even greater certainty. Our addition of the phrase ''day-to-day'' also obviates the need to add the phrase *de minimis* in the regulatory text.

119. As noted, INGAA posits a number of hypotheticals involving varying percentages of time that a supervisor spends reviewing trades, and seeks guidance as to when such involvement would rise to the level of rendering him a marketing function employee. It is unnecessary to address each of these hypotheticals, because the key to the question lies in the fact that if a supervisor is simply signing off on a deal negotiated or proposed by someone else, and is not involved in overseeing and providing input into the negotiations, he is not himself engaged in the marketing function activity. Likewise, upper level management personnel who review contracts over a certain dollar amount are not converted into deal-makers themselves, simply by virtue of that review. This is also true for other personnel, such as attorneys, accountants and other advisors who may examine a contract for its conformity to legal, accounting or other requirements. Such review does not render them marketing function employees.

120. It may be objected that a lower level supervisor on the trading floor could hardly ignore proscribed transmission function information with which he is familiar in reviewing a deal. However, the closer the supervisory employee is to the trading activity, the more likely it is that he will be overseeing and providing input into the trades, and not simply signing off on a deal, and thus would be considered a marketing function employee.

[127] Idaho Power at 7; Bonneville at 4–5.

[128] E.ON at 10, AGA at 20, El Paso at 1; Idaho Power at 7; TDU Systems at 8–9; Western Utilities at 4–5; Williston at 12–13. INGAA presents hypothetical examples of varying levels of supervisory involvement in a number of different transactions, seeking guidance as to what level of involvement distinguishes supervisory personnel from those that fall within the definition of marketing function employee. INGAA at 30–32.

[129] INGAA at 112; LPPC at 11–12; Western Utilities at 4–5; Idaho Power at 7, National Grid at 17, PG&E at 16–18; Puget Sound at 4–6; E.ON at 10. AGA would add fulfilling obligations associated with corporate delegation policy or strategic or long-term planning. AGA at 20. Nisource asserts that the Commission has permitted transmission providers to allow senior managers, officers or directors to have ultimate responsibility for transmission operations and wholesale merchant functions, as long as they do not participate in directing, organizing or executing transmission system operations or reliability functions or wholesale merchant functions. Nisource at 13.

[130] Southern Co. Services at 21–22.

[131] TDU Systems at 9–11; SCANA at 7–8. TDU Systems also asks that the Commission clarify and expand its explanation of the activities that would cause a supervisor or director to be regarded as actively and personally engaged in transmission functions. TDU Systems at 9.

[132] SCANA at 7–8.

[133] Duke at 5–6.

[134] *Id.*

[135] MidAmerican at 12.

[136] INGAA at 112.

[137] The phrase ''day-to-day'' appears in the definition of transmission function employee in the existing Standards. 15 CFR 358.3(j).

121. A principal goal of the reforms made in this Final Rule is to provide greater certainty to regulated entities and their employees regarding the scope of the Independent Functioning Rule and the No Conduit Rule. The carefully circumscribed nature of the definitions of transmission functions and of transmission and marketing function employees should provide greater clarity than is contained in the existing Standards with regard to the permissible activities of supervisors, managers, and corporate executives. We suggest that if a situation truly does appear to be a close call, that in itself should be a red flag that suggests conservatism in applying the rule. In this area, it is best to err on the side of caution.[138]

122. For further clarification as to what is included in the day-to-day operation of the transmission system (and thus which employees would be considered transmission function employees), we mention the following examples, in addition to the granting and denying of service requests already specified in the definition: Coordinating the actual physical flows of power or gas, balancing load with energy or capacity, isolating portions of the system to prevent cascades, imposing transmission loading relief, and the like. Supervisors who are not actively and personally engaged in activities of these or a similar nature would not be considered to be transmission function employees. In regard to AGA's and Duke's requests for clarification regarding the roles of managers and officers who are involved in corporate governance, strategic and long-range planning, and development of general negotiating parameters for wholesale contracts, we clarify that these types of activities go beyond the day-to-day activities that characterize transmission function employees and marketing function employees, and participation in them would not make an employee a transmission function employee or a marketing function employee.

6. Elimination of Shared Employees Concept

a. Commission Proposal

123. In the NOPR, the Commission noted that the corporate separation approach instituted in Order No. 2004 made it difficult for companies to transact needed business because all the employees of a marketing affiliate would be walled off from the transmission provider's transmission function employees. The corporate separation approach required the creation of whole categories of employees who could be shared between the transmission provider and the marketing affiliate, such as officers and members of the board, field and maintenance employees, and risk management employees.[139] Issues have also arisen under the existing Standards as to whether such employees as lawyers, accountants, and rate design personnel should be exempted. The NOPR's substitution of the employee functional approach in place of the corporate separation approach eliminates the need for shared employees, since it is now only marketing function employees who must function independently from transmission function employees. Therefore, the regulatory text omitted any mention of shared employees.

b. Comments

124. The elimination of the concept of shared employees seemed to have confused some commenters. Idaho Power requests that the Commission clarify what it means when it states in the NOPR that there is no longer a need for the concept of shared employees, considering that those employees' roles have not changed.[140] EPSA requests that the Commission either amend all other orders that reference shared employees or address the ambiguity in the Final Rule by stating the concept no longer exists in Commission regulations.[141] However, NiSource requests that the Commission confirm that the categories of employees identified by Order No. 2004 as ''shared'' continue to exist with the same status under the proposed Standards.[142]

125. Wisconsin Electric and INGAA request additional guidance on how some formerly ''shared employees'' would be classified. These employees include attorneys, accountants, risk management personnel, and regulatory personnel who must approve the transactions made by marketing function employees.[143] Wisconsin Electric and INGAA request that these employees should not be classified as marketing or transmission function employees and INGAA proposes that the Commission modify the definitions of transmission and marketing function employees to expressly exclude risk management employees.[144]

126. Similarly, PSEG requests clarification as to the comment in paragraph 41 of the NOPR that rate design employees fall within the current Standards' concept of ''shared employees.'' PSEG asks whether this comment indicates that the Commission is abandoning what PSEG states was its position in Order No. 2004–C as to considering certain rate design functions to be transmission functions.[145] PSEG also requests that the Commission clarify that employees who are shared between affiliated transmission and marketing functions and whose primary purpose is to develop and implement policy for the companies, advocate policies in various forums, or engage in strategic planning or financial decision making do not fall within the definitions of ''transmission function employee'' or ''marketing function employee.''[146]

127. EPSA asks the Commission to clarify whether the Independent Functioning Rule extends to consultant companies that offer both transmission and marketing services for corporate companies.[147] In addition, National Grid asks whether contractor firms who are retained to provide services may be considered transmission and marketing function employees.[148] Although National Grid does not believe contracting firms should be tied to a function, EPSA and National Grid would subject employees of these respective companies to the No Conduit Rule as appropriate.[149]

128. Idaho Power seeks clarification that despite the elimination of the shared employee concept, those employees who were formerly considered shared employees will still be subject to the No Conduit Rule.[150]

c. Commission Determination

129. As discussed in the NOPR, the substitution of the employee functional approach for the corporate separation approach renders continuation of the concept of ''shared employees'' unnecessary. Since only those individuals who engage in transmission or marketing functions now fall within the scope of the Independent Functioning Rule, support personnel of the type formerly included in the concept of shared employees, and who

[138] As observed above, entities also have several avenues by which to receive guidance on such issues from the Commission or Commission staff. *See Obtaining Guidance on Regulatory Requirements*, 123 FERC ¶ 61,157 (2008).

[139] NOPR at P 24.

[140] Idaho Power at 9.

[141] EPSA at 5.

[142] NiSource at 11–12.

[143] INGAA at 36–40; Wisconsin Electric at 4–5; LPPC at 18–19.

[144] INGAA at 36–40.

[145] PSEG at 7.

[146] PSEG at 5.

[147] EPSA at 6.

[148] National Grid at 20.

[149] EPSA at 6; National Grid at 20.

[150] Idaho Power at 9.

do not meet those definitions, do not. Therefore, there is no need to further exempt them under the outmoded rubric of shared employees.

130. We decline to amend prior orders that mention shared employees; guidance from prior orders will be applicable or not depending on whether those orders address concepts that survive the revisions made in this Final Rule. We also decline to grant NiSource's request that employees formerly classified as ''shared'' continue in that classification. This would entail resurrecting the concept, and is unnecessary.

131. Commenters raise questions as to whether various types of employees formerly classified as shared employees are beyond the scope of the Independent Functioning Rule, citing such employees as attorneys, accountants, risk management personnel, regulatory personnel, rate design personnel, and strategic planning personnel. Again, the determination depends on the answer to a more fundamental question: Do such employees function in their stated roles, or do they also actively and personally perform day-to-day transmission functions or marketing functions? If they do not perform transmission functions or marketing functions, they are not subject to the Independent Functioning Rule. Therefore, if an attorney is rendering legal advice, he may consult with both transmission function employees and marketing function employees. Likewise, a risk management employee may develop risk guidelines for both transmission function employees and marketing function employees. And regulatory personnel may present before regulatory bodies filings that cover both transmission and marketing issues. Of course, all such employees would remain subject to the No Conduit Rule, and are prohibited from transmitting transmission function information to marketing function employees.

132. We disagree with PSEG's contention that the Commission is abandoning its position in Order No. 2004–C, which PSEG characterizes as determining that certain rate design functions qualified as transmission functions. Order No. 2004–C specifically stated that we would consider ''the actual duties and responsibilities of employees in determining whether they are transmission function employees.'' [151] Here, as well, if a rate design employee were also assigned the responsibility for performing transmission functions, he or she would be a transmission function employee. However, if the rate design employee is merely calculating rates to propose to the appropriate regulatory body, the employee would not be a transmission function employee; as discussed above, we are restricting the definition of transmission functions to the day-to-day operation of the transmission system.

133. We grant EPSA's and National Grid's requests for clarification as to whether consultants and contractors are subject to the Independent Functioning Rule, and whether their firms are as well. Agents and outside consultants and contractors who serve as transmission function employees must function independently of marketing function employees, and vice versa. However, the fact that given individuals employed by a consulting firm may function in one of the two categories does not bar other individuals employed by the same firm from functioning in the other category. Of course, consultants and contractors functioning as transmission function employees may not interact with consultants and contractors functioning as marketing function employees, and all such consultants and contractors must abide by the No Conduit Rule.

134. We also grant Idaho Power's request for clarification that employees formerly classified as shared employees are still subject to the No Conduit Rule. Not only are these employees subject to the No Conduit Rule, but so are all employees, regardless of their status or classification.

7. Long-Range Planning and Procurement

a. Commission Proposal

135. The corporate separation approach of the former Standards created difficulties for public utilities engaged in long-range planning, and this difficulty was one of the impetuses that led to the reforms instituted in this Final Rule. Because such planning activities frequently encompass both transmission and generation issues, and because under the existing Standards none of the employees of a marketing or energy affiliate (except for shared employees) could interact with the transmission function employees of a transmission provider, it was difficult for planning personnel to gather needed information and to consult with appropriate personnel in order to make decisions on such basic matters as whether to build generation or to buy power. It was never the intent of the Commission to interfere with legitimate planning activities, something that is vital for the continued efficient operation of both the electric and natural gas industries.

136. The NOPR proposed substituting the employee functional approach for the corporate separation approach to the Independent Functioning Rule, thus permitting most company employees to interact with one another, and eliminating the wholesale walling off of all marketing and energy affiliate employees from the transmission function employees of the transmission provider.

b. Comments

137. Many commenters seek additional clarification from the Commission regarding the effect of the proposed Standards on long-range planning, and urge the Commission to clarify that employees do not become marketing or transmission function personnel by engaging in activities such as integrated resource planning (IRP), competitive solicitations, or non-competitive solicitations that are conducted under state supervision.[152]

138. Some commenters ask the Commission to clarify whether ''transmission functions'' includes long-range operations of the transmission system. SMUD and Idaho Power request that the proposed Standards exclude long-term transmission system planning, and the specific activities involved in that planning, from the definitions transmission function.[153] TDU Systems, on the other hand, requests that the Standards do apply to transmission function employees who engage in long-term transmission planning. However, TDU Systems also believes that transmission function employees should be permitted to provide limited information to marketing function employees regarding the feasibility of generation proposals.[154]

139. SCANA requests that neither generation-related employees that are physically located onsite at the generating facilities nor employees that are responsible for short and long-term resource planning be classified into one of the functions.[155]

140. Many commenters also object to the Commission's inclusion of ''submission of offers or bids to buy or sell'' in the proposed definition of

[151] Order No. 2004–C at P 30.

[152] EEI at 33; California PUC at 4, 7–8; Entergy at 2; TANC at 4–5; SCE at 7–8; Vectren at 6–8, 10.

[153] SMUD at 2; Idaho Power at 12–13.

[154] TDU Systems at 5, 11–12.

[155] SCANA at 10–15. Similarly, PG&E requests that the Commission confirm that the transmission function employees who have the responsibility to serve retail load may work cooperatively to plan transmission and generation on an integrated basis as required to meet state mandates. PG&E at 8.

marketing functions. These commenters identify numerous barriers that the inclusion of this phrase would place on long-range planning.[156] These stated barriers include (i) preventing employees engaged in resource procurement from having access to transmission planning information to meet their state obligations; [157] (ii) limiting a company's ability to design and implement effective demand response programs for retail load; [158] (iii) restricting employees from accessing transmission information needed to engage in competitive solicitations for service to retail native load; [159] (iv) restricting integrated resource planning and competitive procurement employees from accessing transmission information needed to engage in power purchases and requests for proposals to serve native load; [160] and (v) interfering with the ability of planning employees to obtain non-public transmission function information necessary to make solicitations as efficient and cost effective as possible.[161]

141. Many commenters also seek clarifications regarding whether certain activities are considered long-range planning or marketing functions. Idaho Power requests clarification that employees performing non-transmission function planning may consult with transmission function employees, without compromising their non-transmission-function-employee status.[162] Xcel asks the Commission to clarify (i) how the marketing function definition applies to both short-term and long-term transactions and to IRP related gas activities; [163] (ii) that marketing function excludes offers to buy or sell natural gas transportation or storage capacity that is the product of long-range planning to serve the native retail load of the gas LDC or to deliver natural gas fuel to electric generating plants owned or controlled by the utility; [164] and (iii) that the proposed standards allow utilities the flexibility to pursue self-build or build/transfer options without running afoul of the Independent Functioning Rule.[165]

142. Many commenters also propose amendments to the proposed standards to remedy their concerns. Multiple commenters propose to remove ''buy'' from section 358.3(c), asserting that the Commission does not have direct authority over purchases.[166] PG&E's proposed resolution is to amend the definition by introducing language limiting the scope of the definition to wholesale purchases and sales.[167] Salt River suggests defining ''marketing functions'' simply as sales for resale.[168] To ensure that demand response is construed as a planning, rather than marketing, function, LPPC requests an additional exception for development, administration or implementation of demand response programs, including the issuance of requests for proposals or the awarding of contracts for demand response.[169] Commenters stress that these modifications are sufficient because such employees would remain subject to the No Conduit Rule to protect improper disclosure of protected information.[170]

143. Commenters request that the Commission clarify that the Standards do not prevent transmission providers from sharing transmission planning information with unaffiliated network service transmission customers. TAPS requests that the Commission clarify that the proposed Standards do not preclude transmission providers from providing unaffiliated network customers' planning personnel with the same types of information as is made available to the planning personnel of the transmission provider and its affiliates.[171] TAPS, TDU Systems and APPA request assurances that unaffiliated planning representatives involved in the regional joint planning process contemplated by Order 890 have the same access to transmission information as does the transmission provider's own generation planners and affiliates.[172]

c. Commission Determination

144. As stated in the NOPR, one of the principal concerns the Commission had with the current Standards was the barriers they appear to have erected to coordinated resource planning, the critical importance of which the Commission stressed in Order Nos. 890 and 890–A.[173] Public utilities complained they were finding it difficult to gather together the necessary personnel and data to efficiently analyze their long-range needs for both transmission and generation, due to the strictures imposed by the corporate separation approach to the Independent Functioning Rule. For that reason, as well as others, the Commission revised the scope of the Independent Functioning Rule to encompass only transmission function employees and marketing function employees, thereby concentrating the rule on the area that presented the greatest potential for undue preferences.

145. Commenters expressed approval of the Commission's efforts to remove unnecessary barriers to resource planning, but many raised concerns that some barriers still remain. Others sought clarification as to the implications of the proposed Standards on the transparency of the resource planning process. These concerns fall in two main areas: whether ''transmission functions'' include long-range operation of the transmission system, thereby implicating employees involved in long-range transmission planning; and whether the definition of ''marketing functions'' should include the phrase ''submission of offers or bids to buy or sell,'' rather than simply ''offers to sell.'' A few commenters also raised concerns about access by third parties to transmission function information in the context of open planning programs.

146. As stated earlier in connection with the discussion of the definition of ''transmission functions,'' the Commission in this Final Rule clarifies that the term refers to the day-to-day operation of the transmission system, and has modified the definition accordingly. Long-range planning regarding the transmission system would not be included, and employees

[156] Puget Sound at 5–6.

[157] *Id.;* NARUC at 7.

[158] LPPC at 13–14.

[159] Salt River at 8–10; NARUC at 7; SCE at 7–8; Xcel at 13–14; PG&E at 12–14; EEI at 31–34.

[160] Salt River at 8–10; EEI at 31–36; LPPC at 8; Southern Co. Services at 12–13. Southern Co. Services contends that including these activities in the definition would conflict with state law requiring IRP and requests for proposal (RFP). Southern Co. Services at 11. Southern Co. Services requests that the Commission modify the definition of marketing functions to exclude RFP. *Id.* at 14.

[161] Western Utilities at 7–8; SCE at 8.

[162] Idaho Power at 12–13.

[163] Xcel at 14–16; SCANA at 10–15. Xcel believes that short-term wholesale purchase transactions should be treated comparably with long-term capacity and energy acquisitions to serve native load, since the function is the same: serving native load. Xcel at 14–16.

[164] Xcel at 15–16.

[165] Xcel at 16–18. Xcel also questions whether the marketing function definition should apply to the Xcel Energy Transmission Access Group, which it states acts as the transmission service customer in arranging the long-term transmission service requirements for retail and wholesale native load customers of all four Xcel Energy Operating Companies. Xcel notes that this group does not offer, bid, buy, or sell electric energy or natural gas nor does it take positions on financial transmission rights in organized markets. Xcel at 19–20.

[166] Western Utilities at 8–9; Salt River at 8–9; SCE at 8.

[167] PG&E at 12–14.

[168] Salt River at 8–10.

[169] LPPC at 13–14.

[170] Salt River at 8–10.

[171] TAPS at 38.

[172] TAPS at 38; TDU Systems at 4; APPA at 6.

[173] NOPR at P 32. *See Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 425 (2007), *order on reh'g and clarifications,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261, at P 171 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008).

engaged in such long-range planning, provided they were not also actively and personally involved in the day-to-day operation of the transmission system, would not be considered transmission function employees. Therefore, the Independent Functioning Rule would not apply to them.

147. Idaho Power Company requests clarification that long-range planning functions such as integrated resource planning and preparation of system impact studies not be considered transmission functions. We reiterate that so long as these activities do not implicate the day-to-day operation of the transmission system, they are not transmission functions. SMUD likewise questions whether long-range transmission planning is included in the definition; our amendment in this Final Rule clarifies that it is not. And SCANA requests that employees who perform generation-related resource planning not be considered transmission function employees (or marketing function employees). These employees do not perform day-to-day transmission operations, and thus are not transmission function employees. Furthermore, they are not engaged in sales of energy for resale, and thus are not marketing function employees under our revised definition of the term.

148. As discussed above, the Commission has determined to remove ''bids to buy'' from the definition of marketing functions, in large part because the Commission's jurisdiction centers on sales for resale in interstate commerce, not on purchases. It is also unnecessary to include purchases in the scope of the rule in order to categorize marketers making off-system sales as marketing function employees; personnel making purchases destined to serve off-system sales would be so categorized by virtue of their involvement in the sale portion of the transaction. The removal of purchases from the definition of marketing functions addresses the concerns of the many commenters who feared that barriers to long range resource planning might still remain under the proposed Standards.

149. LPPC is concerned that inclusion of demand response in the definition of marketing functions could interfere with the development of demand response programs as a part of long-range planning. As discussed above, the Commission does not intend to interfere with demand response programs that an LSE has established for its customers, and inclusion of the term demand response in the definition would thus not impede planning for demand response programs. PG&E's request to exclude from the definition of marketing functions those purchases made to serve bundled native load or pursuant to state obligations is mooted by our limitation of the definition to sales and not purchases.

150. Our revised definition of transmission functions, limiting it to the day-to-day operation of the transmission system, should enable the free flow of the type of transmission information needed for planning purposes. And the removal of purchases from the definition of marketing functions should expand the category of personnel who are permitted access to the type of information necessary to engage in long-range system planning and competitive solicitations, whether conducted pursuant to state mandate or not.

151. Idaho Power Company seeks guidance as to whether long-range planning personnel will be able to discuss information with transmission function employees. If the planning personnel do not otherwise qualify as marketing function personnel, they may hold such discussions. However, if the transmission employees in question have access to transmission function information and share it with the planning personnel, under the No Conduit Rule the planning personnel may not pass such information on to marketing function personnel.

152. In Order No. 890, the Commission deferred consideration of the impediments to the planning process which some commenters therein stated were created by the Standards.[174] Our modifications to the proposed definition of transmission functions (limiting such functions to the day-to-day operation of the transmission system) and to the proposed definition of marketing functions (removing purchases from the definition) address those concerns. TAPS and TDU Systems, however, raise a separate concern, asserting that the ability of public utilities to enjoy the relatively free flow of information permitted under the revised Standards may encourage them to refrain from sharing such information with non-affiliated entities in the planning process. We reiterate our commitment, set forth in Order No. 890, as to the desirability of a coordinated and open planning process.[175] This proceeding is not the proper forum to address the appropriate extent of participation by interested entities in the planning processes of public utilities. However, as we stated in Order No. 890, the transmission provider must make available to any interested party the same data, information, and models it uses in the transmission planning process.[176]

8. Exclusion for Permitted Information Exchanges

a. Commission Proposal

153. In the NOPR, the Commission proposed an exclusion to both the Independent Functioning Rule and the No Conduit Rule for information that we believed required communication between transmission function employees and marketing function employees. Two categories of information were implicated: information regarding generation necessary to perform generation dispatch, and information necessary to maintain or restore operation of the transmission system. The Commission proposed that in situations requiring the exchange of such information, contemporaneous records be made of the communication, except in cases of emergency, when recordation was to be made as soon after the fact as practicable. The NOPR also proposed that the records of the communications be retained for a period of five years. See proposed sections 358.5(b), 358.6(b), 358.7(h).

b. Comments

154. Commenters raised the general concern that the provisions designating the proposed permitted interactions are drafted too narrowly to fully cover the types of communications they purport to exclude.[177] With respect to generation dispatch, MidAmerican believes that the exclusion should cover all communications necessary to perform generation dispatch, and suggests eliminating the words ''regarding generation.''[178] ALCOA suggests the exclusion should cover the situation where transmission function employees perform generation dispatch.[179] NiSource asks the Commission to delineate which generation-related information is exempted.[180] Bonneville contends that communications necessary to provide generation inputs for ancillary and control area services should be permissible, and not subject to the contemporaneous record requirement.[181]

155. Commenters also seek clarification on the type of generation

[174] Order No. 890 at n.269.

[175] *Id.* at P 425.

[176] *Id.* at P 471.

[177] *See, e.g.*, Nisource at 21–22; MidAmerican at 15–16.

[178] MidAmerican at 15.

[179] ALCOA at 6.

[180] Nisource at 23.

[181] Bonneville at 6.

information transmission function employees may share with generation employees. E.ON and PSEG seek confirmation that employees engaged in generation-related activities may receive transmission function information from transmission function employees.[182] Likewise, EEI requests that the Commission clarify that the exclusion for information necessary to maintain or restore operation of the transmission system includes information necessary for the scheduling of transmission-related generation outages.[183] PSEG further requests that the Commission address the circumstance where employees performing generation-related activities are the same employees performing trading activities.[184]

156. Numerous commenters requested clarification on the scope of the reliability exemption.[185] National Grid requests clarification that the reliability exclusion is not limited to those communications related only to transmission system reliability,[186] and other commenters believe the exclusion should cover all types of reliability communications.[187] PSEG requests, instead, specific examples of permitted reliability communications.[188] E.ON suggests that these excluded communications for reliability purposes can only be made to the same extent that a transmission provider would communicate with a similarly situated non-affiliated entity engaged in wholesale merchant operations.[189]

157. Destin contends that the proposed rule discriminates against natural gas transmission providers, averring that the two types of permitted information apply only to electric transmission providers.[190]

158. Ameren notes that elsewhere in the proposed regulations, the Commission uses the terms ''permitted information'' or ''permitted information exchanges.'' Ameren requests that the Commission be consistent throughout the Final Rule.[191]

159. Some commenters propose alternative methods of defining permitted exchanges. Western Utilities urges the Commission to recategorize the descriptions proposed in sections 358.5(b), 358.6(b) and 358.7(h) as a permissible subset of non-public transmission function information.[192] SCE prefers a modification to section 358.6(b) that describes a particular set of safe harbor exchanges.[193]

160. EEI contends that the Commission's exclusions for permitted information exchanges should be phrased as ''exemptions'' rather than ''permitted communications'' to clarify that other forms of communication, such as social conversations, are not implicitly barred because they are not identified as ''permitted'' communications.[194]

161. SCANA would like confirmation that if generation dispatch employees are part of the company's transmission function, not its marketing function, then communications between such employees and non-dispatch-oriented transmission function employees necessary to perform generation dispatch and to maintain or restore operation of the transmission system are permissible.[195]

162. SCE requests that the Commission include the phrase ''non-public transmission'' to the exclusion for permitted information exchanges to avoid the unintended implication that all exchanges between marketing function employees and transmission function employees are banned except the specific exchanges described.[196]

163. PSEG seeks clarification that marketing function employees may communicate with employees of a gas LDC that is not affiliated with a gas transmission provider. PSEG asserts that communications in such a circumstance are essential for generation dispatch purposes and pose no threat of prohibited communications.[197]

164. Ameren requests that the Commission clarify that proposed section 358.6(b) does not preclude support personnel from sharing information related to a marketing affiliate's specific transmission service request.[198] Ameren also asks the Commission to clearly state in the Final Rule that the permitted information exclusion includes the operating information exemption it states is permitted under Order No. 2004.[199]

165. Many commenters express confusion with respect to the record requirement arising from proposed sections 358.2(d) and 358.7(h). Commenters request clarification that the record retention requirement is limited to the two narrow categories of permitted communications identified in section 358.7(h).[200] Likewise, National Grid requests the Commission confirm that the contemporaneous record requirement applies only to the types of communications addressed in sections 358.5(b), 358.6(b) and 358.7(h).[201]

166. Some commenters expressed the concern that the contemporaneous record requirement presents too great an administrative burden.[202] NiSource would eliminate the contemporaneous requirement, stating the Commission neither explains why the records are necessary, nor justifies the burden placed on transmission providers.[203]

167. Other commenters seek clarifications on the mechanics of the record requirement. Idaho Power and Puget Sound ask whether a recorded phone line satisfies the recordation requirement.[204] Puget Sound requests that the Commission not require indexing of these recorded communications.[205] ATC requests that the Commission expressly clarify that permitted communications need not also be contemporaneously posted on the OASIS.[206]

168. Commenters disagree on how much detail should be required for cross-functional meeting records. Puget Sound prefers to record only who attended, the agenda, verification that no discussion of nonpublic transmission function information took place, and any items circulated for the meeting, instead of keeping detailed records.[207] Similarly, E.ON would like assurance that these meeting records need not contain a ''word-for-word'' transcription, so long as the key points are addressed.[208] EPSA, however, believes that there should be an actual transcript or recording of any interaction between restricted employees.[209]

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[182] PSEG at 8; E.ON at 21.

[183] EEI at 53; ATC at 10; Wisconsin Electric at 6–7.

[184] PSEG at 9.

[185] *See, e.g.,* National Grid at 10–11; PSEG at 17–18; Nisource at 22–23; ATC at 4; EEI at 51–52; Destin at 13; E.ON at 19–20; MidAmerican at 14. Reliability Standards refer to the standards promulgated by the North American Electric Reliability Corporation (NERC) and approved by the Commission.

[186] National Grid at 10–11.

[187] *See, e.g.,* National Grid at 10–11; MidAmerican at 14; Ameren at 25; Wisconsin Electric at 6–7.

[188] PSEG at 6.

[189] E.ON at 19–20; *see also* TAPS at 45.

[190] Destin at 12.

[191] Ameren at 27.

[192] Western Utilities at 10–11.

[193] SCE at 6.

[194] EEI at 50.

[195] SCANA at 8–10.

[196] SCE at 6–7.

[197] PSEG at 6, 10–11.

[198] Ameren at 27.

[199] *Id.*

[200] *See, e.g.,* Idaho Power at 9–10; National Grid at 22–24; MidAmerican at 13; Xcel at 22.

[201] National Grid at 22–23.

[202] *See, e.g.* , NiSource at 19; Destin at 13; ATC at 16.

[203] NiSource at 19.

[204] Idaho Power at 9–10; Puget Sound at 11.

[205] Puget Sound at 12–13.

[206] ATC at 8.

[207] Puget Sound at 13.

[208] E.ON at 23.

[209] EPSA at 10–11.

169. INGAA contends that this recordation requirement implies, through the use of the word ''exchange,'' that it extends to information received from the marketing function employee.[210] INGAA asks the Commission to clarify that the recordation requirement applies only to non-public transmission information provided *to* a marketing function employee, and not to information received *from* a marketing function employee.[211]

170. Wisconsin Electric urges the Commission to consider adopting a six-month time period, after which disclosure of non-public transmission function information to a marketing employee is no longer a violation.[212] And Williston requests that the five-year retention requirement for the contemporaneous records of its communications be reduced to three years.[213]

171. Williston believes that the new Standards should allow whatever steps are necessary to be taken during an emergency, without regard to the record requirement.[214] Likewise, ATC and EEI state that any contemporaneous records created after an emergency should simply be assembled only to the extent possible and to the best knowledge of that company at that time, and that no extraordinary duties should be imposed to meet the Standards' requirements.[215]

172. Williston asserts that requiring records for non-emergency communications places more onerous controls on the sharing of information, without justification.[216] Williston also requests assurances that in situations where such communications are provided to the Commission, that they will remain non-public.[217]

173. National Grid proposes that the Commission eliminate the proposed requirement that each company's Chief Compliance Officer direct and manage contemporaneous recordings, and allow each company to individually determine how best to comply with the contemporaneous record requirement.

c. Commission Determination

174. As discussed above, the Commission is eliminating the corporate separation approach to the Independent Functioning Rule, and transmission function employees are no longer barred from interacting with *all* the employees of a marketing or energy affiliate (only marketing function employees). Therefore, the occasions where transmission function employees will legitimately need to interact in a professional capacity with employees barred from doing so under the Independent Functioning Rule is greatly reduced from the current Standards. This is especially true in the critical areas of reliability and generation dispatch, as it is rarely marketing function personnel who engage in these activities. However, to cover any isolated circumstances that may remain, such as in the case of smaller utilities whose employees may perform multiple job duties, the Commission proposed in the NOPR an exclusion to the Independent Functioning Rule and the No Conduit Rule to ensure that where certain critical functions were concerned, employees would not hesitate to interact with one another for fear of violating the Standards.

175. The bulk of the confusion which seems to have arisen over the exclusion, as expressed in the comments, centers on generation dispatch. Because dispatch is not inherently a marketing function, and because persons engaged in marketing are very unlikely to also be engaged in generation dispatch, commenters have assumed the Commission meant the exclusion to cover some broader situation. That is not the case. It was intended only for those rare instances, such as with smaller utilities, where some overlap of duties might exist.

176. To avoid any further confusion, the Commission eliminates from section 358.7(h) the exclusion pertaining to generation dispatch, and instead broadens the exclusion for reliability to include generation concerns. The Commission further broadens the exclusion for reliability to include compliance with reliability standards generally. The proposed first exclusion is thus eliminated and the proposed second exclusion is split into two parts, to read as follows: ''information pertaining to compliance with Reliability Standards approved by the Commission,'' and ''information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units.'' Furthermore, to avoid duplication, the Commission deletes the redundant statements of the exclusion in sections 358.5(b) and 358.6(b). The Commission also deletes the statement of the exclusion from section 358.2, as it contains a level of detail inappropriate for a statement of general principles. The statements of both the exclusion and the retention requirement pertaining to it are now contained in section 358.7(h), under the Transparency Rule.

177. The Commission agrees with SCE that the phrase ''non-public information'' should be added to the statement of the exclusion, to avoid the implication that exchanges of public information must also be recorded, and modifies the text accordingly. Likewise, the Commission clarifies, in response to a request from INGAA, that it is transmission function information that is not to be disclosed, and as to which the exclusion applies, and modifies the language of the exclusion accordingly. However, we remind INGAA that with respect to the Independent Functioning Rule, it is the interaction of transmission function employees and marketing function employees that is at issue. Such interactions ought not to occur, except for non-business related activities or in connection with the exclusion under discussion.

178. Some commenters are concerned that acceptable interactions among employees not covered by the exclusion might be inadvertently swept into the recordation requirement by use of the term ''permitted.'' To avoid any confusion over the scope of the term, the heading will read: ''Exclusion for and recordation of certain information exchanges.'' We point out, however, that while transmission function employees and marketing function employees may talk about personal matters, which certainly need not be recorded, they are required to function independently from one another with respect to their work activities. Therefore, their interactions should be limited to social activities or to the necessary discussion of information that falls within the exclusion discussed. And, as indicated, in the latter case appropriate recordation is to be made.

179. SCANA states that the employees of its affiliated utility who perform generation dispatch are included in the utility's transmission function, and requests guidance as to their status as it pertains to the exclusion. The Commission confirms that if such employees are not performing marketing functions, they may freely interact with other transmission function employees, and need not be concerned with the exclusion in question.

180. PSEG seeks clarification that marketing function employees may communicate with employees of a gas LDC that is not affiliated with a gas transmission provider. Such communications would not involve transmission function employees or the dissemination of transmission function

[210] INGAA at 55–58.
[211] INGAA at 57–58.
[212] Wisconsin Electric at 7–8.
[213] Williston at 11.
[214] Williston at 9–10.
[215] ATC at 16; EEI at 4.
[216] Williston at 10.
[217] *Id.* at 11.

information to an affiliated marketing function employee, and thus would be permissible.

181. The Commission confirms that the exclusion does not implicate the processing of transmission service requests from an affiliate, which is permissible. Ameren requests the Commission to carry over into the revised Standards the following provision: ''A transmission provider is permitted to share information necessary to maintain the operations of the transmission system with its Energy Affiliates.'' This provision is no longer needed, due to the elimination of the concept of energy affiliates and the restrictions pertaining to such affiliates.

182. Some commenters suggest the recordation requirements of the exclusion create an added burden on their operations. To the contrary, the Standards greatly reduce the burdens on operations. Under the existing Standards, transmission function employees must function independently from *all* the employees of a marketing affiliate, not just the marketing function employees. It can readily be seen that limiting the restriction on interactions to marketing function employees virtually eliminates the need for the exclusion itself. And in those rare cases noted in the exclusion where interaction between transmission function employees and marketing function employees may be required, the transmission provider is not prohibited from allowing the interaction, it simply must keep a record to enable the Commission to ascertain whether the communications fell within the scope of the exclusion or not.

183. The Commission clarifies that the recording of any meetings and exchanges of information under the exclusion need not take any particular form; thus, a recorded phone line is sufficient. The Commission declines to require a transcript, as one commenter suggests, as this would be impracticable. The important element of the requirement is to make a record of what generally was discussed, and the date and persons involved. Puget Sound requests that entities not be required to index the communications. No particular extraction method for the data is required; however, communications subject to the exclusion must be retrievable in some fashion, in order for Commission staff to review them if necessary.

184. The Commission agrees that an entity may designate someone other than its chief compliance officer as the person responsible for managing the recordings under the exclusion, and eliminates that restriction from the regulatory text. The five-year holding period matches that set forth in proposed section 358.4, and will be retained. This period, rather than the requested three-year period that governs the retention of certain shipper data under 18 CFR 284.12 (2008), will better enable Commission staff to access the information in the course of periodic audits or other interactions with the entity in question, which may occur on an infrequent basis.[218]

185. With respect to emergency circumstances during which contemporaneous recordation cannot be made, the Commission clarifies that after-the-fact recordation need be assembled only to the extent possible; we recognize that the thoroughness of such notes or other recordation will vary greatly depending on the nature and extent of the emergency.

186. The Commission declines to adopt a time period for the possible transition of non-public information to public information. The continued usefulness of such information to an affiliated marketing function employee will depend on the circumstances, and thus does not lend itself to a generic rule. The Commission also notes that its regulations govern whether information it receives is treated as non-public or otherwise; as a general matter, information received in connection with investigations is so treated.[219]

187. Lastly, Destin suggests the proposed exclusion by its terms discriminates against the gas industry. That is not correct. The definition of transmission in section 358.3(f) includes gas transportation as well as electric transmission. Therefore, information necessary to maintain or restore operation of the transmission system refers to pipelines as well as to electric transmission.

D. The No Conduit Rule

188. In the NOPR, the Commission proposed carrying forward the no conduit prohibition of the existing Standards, but modified it to encompass only marketing function employees, not all employees of a marketing or (for the electric industry) an energy affiliate, as the persons who could not receive transmission function information. As in the case of the analogous reform to the Independent Functioning Rule, this change restricts the category of individuals who should be walled off from transmission function information to those who can capitalize on it in the form of an undue preference.

1. Commission Proposal

189. The Commission proposed prohibiting employees of a transmission provider from disclosing non-public transmission function information to the transmission provider's marketing function employees (defined to include employees of an affiliate). The Commission also proposed prohibiting the receipt of transmission function information by a transmission provider's marketing function employees. See proposed section 358.6.(a).

2. Comments

190. EPSA agrees with all the NOPR proposals designed to strengthen the No Conduit Rule and approves broadening the scope of the term ''non-public'' as much as feasible.[220]

191. SCE states that the prohibition set forth in proposed section 358.6(a)(1), prohibiting transmission function employees from disclosing non-public transmission function information to marketing function employees, is redundant, since all employees are so prohibited under proposed section 358.6(a)(4). SCE recommends that the provision be amended by substituting the words ''non-marketing function employees and affiliate employees'' for ''transmission function employees'' and deleting the proposed section 358.6(a)(4).[221]

192. Many commenters object that the prohibition against receiving non-public transmission function information ''from any source'' is, in one or more ways, unworkable and unenforceable.[222] SCE claims the proposed section is also unfair because of what it sees as the Commission's intent to approach violations to the proposed Standards as *per se* violations.[223] Commenters argue

[218] It is also consistent with the time period adopted by the Commission in Order No. 677, amending the retention period for price data under 18 CFR 284.288(b) and 284.403(b) (natural gas) and 18 CFR 35.37(d) (electricity), *Revisions to Record Retention Requirements for Unbundled Sales Service, Persons Holding Blanket Marketing Certificates, and Public Utility Market-Based Rate Authorization Holders,*FERC Stats. & Regs. ¶ 31,218 (2006); Order No. 670 prohibiting market manipulation under 18 CFR part 1c, *Prohibition of Energy Market Manipulation,* FERC Stats. & Regs. ¶ 31,202 (2006); and the generally applicable five-year statute of limitations where a penalty provision does not impose its own statute of limitations. *See* FERC Stats. & Regs. ¶ 31,218 at n.6.

[219] See 18 CFR part 1b (2008). *See also* 18 CFR 388.112 and 388.113 (2008).

[220] EPSA at 8.

[221] SCE at 6.

[222] *See, e.g.*, AGA at 23–25, ALCOA at 6–8, Ameren at 29–30, Arizona PSC at 3–5, Bonneville at 9–10, E.ON. at 14–15, EEI at 42–44, Entergy at 3, Idaho Power at 10, INGAA at 43–45, INGAA Response at 3, NiSource at 19–20, PG&E at 22, PSEG at 15–16, Puget Sound at 10–11, SCE at 2–5, Southern Co. Services at 25–26, Western Utilities at 5–7, and Wisconsin Electric at 9.

[223] SCE at 3.

that transmission providers cannot control whether affiliated marketing function employees receive non-public transmission function information from third parties, and many commenters further contend that the receiving marketing function employee may not have a way to know whether the information is non-public.[224] SCE states that because the proposed prohibition operates against marketing function employees who work for transmission providers and not against those who do not, the Commission is providing the latter a competitive advantage in that they can receive information the former cannot.[225] Western Utilities also complains that no posting ''cure'' provision has been provided for improper disclosures by a third party to a marketing function employee.[226]

193. Many commenters recommend either amending this prohibition or eliminating it. Some commenters believe that the other sections of the No Conduit Rule adequately ensure that improper transfers of non-public information will not occur, and request that the Commission eliminate the proposed prohibition.[227] SCE prefers amending the provision to prohibit disclosure or access to, rather than receipt of, non-public transmission function information.[228] INGAA suggests, and others agree, that the prohibition ''from any source'' be eliminated and substituted with language limiting the provision to information received from a transmission function employee of the transmission provider.[229]

194. NGSA believes that the language of the No Conduit Rule prohibits distribution of non-public transmission information only to a pipeline's in-house marketing function, but does not reach marketing function employees of an affiliate. NGSA proposes amendments that it believes ensure that the prohibition reaches both.[230] On the other hand, AGA does not believe that the No Conduit Rule should apply to non-jurisdictional marketing affiliates.[231]

195. Destin is concerned that the No Conduit Rule requires a transmission provider to ensure compliance by the marketing function employees, a task it contends is impracticable in the context of a large and diverse corporate family. Destin believes the proposed Standards effectively adopt a strict liability standard for transmission providers with respect to any violations that may be committed by a marketing affiliate, and that could subject a company to a double penalty for a violation.[232] Dominion Resources agrees with Destin and queries whether the Commission has the authority to enforce violations of the Standards by employees of a transmission provider's affiliates.[233]

196. TDU Systems requests that the Final Rule clarify that generation planners are subject to the No Conduit Rule.[234]

197. Finally, Vectren asks the Commission to modify section 358.2(c) to change it from passive voice to active voice, in order to make it consistent with other subsections of section 358.2 and to clarify who must comply with the provision.[235]

3. Commission Determination

198. The Commission believes that the No Conduit Rule is at least equally as critical to the regulatory scheme of the Standards as is the Independent Functioning Rule, and adopts it in this Final Rule. However, we find that certain of the commenters' objections to the proposed regulatory text are well-taken, and modify it to (i) eliminate redundancies and (ii) address the concerns of those who interpret the rule as reaching the unwitting receipt of transmission function information by marketing function employees.

199. We agree with SCE that the first subsection of the rule, proposed section 358.6(a)(1), which prohibits transmission function employees from disclosing non-public transmission function information to their transmission provider's marketing function employees, is redundant. This prohibition is necessarily included in the broader prohibition of the fourth subsection, proposed section 358.6(a)(4), which prohibits any employee of the transmission provider or of its marketing affiliates from making such disclosures. Therefore, we revise the regulatory text to eliminate the proposed first prohibition, and rearrange the remaining list of prohibitions.

200. Many commenters object to the prohibition in proposed section 358.6(a)(2), which prohibits marketing function employees from receiving non-public transmission function information from any source. They argue that such receipt could be unwitting, or forced upon the employees unwillingly. In light of the difficulties in determining whether a marketing function employee may have willingly and knowingly received such information, or rather whether he inadvertently received it, the Commission will eliminate this prohibition in section 358.6. The statement of the No Conduit Rule in the general principles section, section 358.2, is likewise revised to reflect this modification.

201. We further clarify that contractors, consultants or agents, as well as employees, are covered by the prohibition in section 358.6(b), and modify the regulatory text accordingly. We also modify the corresponding regulatory text in the statement of general principles, section 358.2(c).

202. NGSA contends that marketing function employees of an affiliate would not be reached under the No Conduit Rule. That is not the case. Marketing function employees are defined in section 358.3(d) to include employees, contractors, consultants or agents not only of the transmission provider, but also of an affiliate of the transmission provider.

203. Destin claims that the proposed rule makes transmission providers responsible for the actions of their affiliates with respect to the disclosure of transmission function information. That is also not the case. Only one of the prohibitions is solely directed against transmission providers, and it prohibits them from using anyone as a conduit for improper disclosures, something that is clearly within their power. Of course, to the extent transmission providers have corporate control over an affiliate, they are expected to require the affiliate to abide by the Standards.

204. TDU Systems requests clarification that generation planners are subject to the No Conduit Rule. The Commission confirms that not only are generation planners subject to the No Conduit Rule, but so are all other employees of a transmission provider or its marketing affiliate. In response to

[224] Western Utilities observes that the rule could potentially require a marketing function employee to maintain detailed records of all transmission function information he or she hears, and spend significant amounts of time investigating each item to ascertain whether it is non-public. SCE and Western Utilities state the prohibition could also be interpreted as preventing a marketing function employee from attending any meeting involving an ISO, NERC or Regional Entity because of the potential for disclosure of non-public information. SCE at 4; Western Utilities at 6.

[225] SCE at 5.

[226] Western Utilities at 7.

[227] NiSource at 19–20; Vectren at 6; Williston at 11–12.

[228] SCE at 5.

[229] INGAA at 45; PSEG at 15; E.ON at 3; Southern Co. Services at 26; E.ON at 3. Western Utilities contends that while the transmission provider cannot impose or enforce a compliance program on unaffiliated third parties, it may be liable under the proposed rule for prohibited disclosures by third parties. Western Utilities at 5.

[230] NGSA Reply Comments at 10–11.

[231] AGA at 3.

[232] Destin at 4–6.

[233] Dominion Resources at 15.

[234] TDU Systems at 5–6.

[235] Vectren at 11.

Vectrin's request that the active voice be used in section 358.2(c) (the statement of general principles relating to the No Conduit Rule), the Commission believes no change is appropriate. The preceding two general principles refer to affirmative obligations, whereas the principle in question refers to an obligation to refrain from taking certain actions, which lends itself to the passive voice.

E. Transparency Rule

205. In addition to the Independent Functioning Rule and the No Conduit Rule, the NOPR proposed a Transparency Rule, the provisions of which are designed to alert interested persons and the Commission to potential acts of undue preference. Most of the various posting requirements of the existing Standards were placed in this section, and in some cases modified to streamline them and conform them to the new approaches proposed in the NOPR. The various posting requirements are discussed below.

1. Waivers and Exercises of Discretion

a. Commission Proposal

206. The Commission proposed carrying forward most of the existing provisions regarding the non-discrimination requirements of section 358.4, including the provisions regarding the posting of waivers and exercises of discretion. These provisions were proposed to remain under section 358.4.

b. Comments

207. Many commenters contend that the requirement that pipelines log and post all ''exercises of discretion'' is vague, unnecessarily broad, and overly burdensome.[236] Both Williston and INGAA argue that the NOPR expands this requirement without justification.[237] INGAA and NiSource request that the Commission eliminate the requirement altogether.[238]

208. As an alternative to eliminating the requirement, several commenters request that the Commission further clarify its scope.[239] INGAA requests that the Commission clarify that a pipeline need not post all acts of discretion inherent in its day-to-day operations. INGAA and Kinder Morgan request clarification that the provision does not cover information that must be posted under other regulatory or tariff requirements, arguing that would create duplicative posting requirements.[240] Many commenters request clarification that the provision does not apply to acts of discretion regarding tariff provisions that, by their own terms, allow for discretion in their application.[241] INGAA and Dominion Resources assert that subsequent acts of discretion within the tariff's parameters should be presumed non-discriminatory, unless and until someone raises a concern.[242]

209. Other commenters propose to limit the scope of this posting requirement in varying ways. NGSA proposes that the Commission adopt the following rule of thumb: That the pipeline need not post each individual use of a waiver that is generic in application, posted, available to all shippers and cannot be denied when requested; but that the pipeline should post non-generic waivers that are not applied on every request or that are shipper-specific.[243] Alternatively, Williston believes that only a discretionary waiver of a tariff provision that specifically provides for discretionary waiver need be posted.[244] Similarly, Dominion Resources contends that only waivers should be posted, and not ''acts of discretion,'' noting that myriad acts of discretion are continually being made.[245] Chandeleur believes that the retention of documents requirement should refer only to the log of the acts of waiver and exercises of discretion, contending that retention requirements and reproduction specifications for Internet Web site information is addressed in the Commission's regulations at section 284.12(b)(3)(v).[246]

210. Commenters also suggest other modifications to this requirement. NGSA urges that the Commission clarify that the non-discrimination posting requirements set forth in proposed section 358.4 apply uniformly to all gas industry transmission providers, regardless of whether the transmission provider has marketing affiliates or whether those marketing affiliates transact business on the pipeline.[247] In addition, NGSA requests that the Commission establish a standardized format for the posting of offers of a discount and discretionary waivers, to ensure that the disclosures are more accessible and include all relevant information.[248] And Williston requests that the Commission reduce the retention period to three years, instead of five.[249]

211. Commenters also request modifications to the proposed requirement regarding posting of discounts, set forth in section 358.4(b). Chandeleur believes that proposed section 358.4(b) contains unnecessary overlap with the existing regulatory text in section 250.16(d) of the Commission's regulations, and requests that the Commission adopt the approach of having only one subparagraph within the regulation setting out the elements required to meet the reporting burden for Form 592.[250]

212. ATC believes that the discount requirement should not apply to transmission providers that participate in an RTO or ISO, if the discount is granted by the RTO or ISO without the consent or approval of the transmission provider.[251]

c. Commission Determination

213. Proposed section 358.4, which generally deals with non-discrimination requirements, also contains the posting requirements for notices of waivers, notices of exercises of discretion, and discounts. Inasmuch as these posting aspects of the proposed section relate to the Transparency Rule, we move them to section 358.7, which includes the other posting requirements under the Standards. Further, in response to NGSA's request, we clarify that section 358.4 as a whole, as well as the posting requirements moved to section 358.7, apply to all transmission providers, in accordance with the limitations set forth in section 358.1.

214. Commenters had no objections to the general requirements of section 358.4, other than regarding waivers, exercises of discretion and discounts. The Commission is persuaded by the arguments of many commenters that a blanket requirement to post all waivers and exercises of discretion goes beyond what is needed to alert customers and others to possible acts of undue discrimination or preferences in favor of an affiliate. Furthermore, such posting is

[236] *See, e.g.,* INGAA at 50; Nisource at 17; NGSA Reply Comments at 5–7; Kinder Morgan at 5–6; Spectra at 9–10; Williston at 15–17.

[237] Williston at 15–17; INGAA at 50.

[238] INGAA at 50; Nisource at 17.

[239] *See, e.g.,* INGAA at 50; NGSA Reply Comments at 5–7; Kinder Morgan at 5–6; Spectra at 9–10; Williston at 15–17.

[240] INGAA at 52–53; Kinder Morgan at 6.

[241] *See, e.g.,* INGAA at 53–54; NGSA Reply Comments at 5–7; Spectra at 9–10; Dominion Resources at 19; NiSource at 18.

[242] INGAA at 53–54; Dominion Resources at 19.

[243] NGSA Reply Comments at 7.

[244] Williston at 16.

[245] Dominion Resources at 17–20.

[246] Chandeleur at 5.

[247] NGSA Reply Comments at 3–5. NGSA alternatively requests, in the event the Commission believes the scope of this request falls outside of this proceeding, that the Commission initiate an expedited ''companion proceeding'' that seeks to apply the posting requirements generally to all pipelines and not only to a particular subset of pipelines.

[248] NGSA Reply Comments at 16–17.

[249] Williston at 15–17.

[250] Chandeleur at 6.

[251] ATC at 14.

in some cases redundant to the posting requirements set forth elsewhere in our regulations. Therefore, although the Commission confirms the substantive non-discrimination requirements of section 358.4, we modify the posting requirements in a number of ways.

215. As a preliminary matter, the Commission clarifies that for these purposes, a waiver is considered to be a determination to do or not do something that is specifically required to be done or not done by the transmission provider's tariff. An act of discretion, on the other hand, is an action that is within the scope of the tariff provision in question, and which typically involves an exercise of judgment on the part of the transmission provider. The Commission has in some cases approved tariffs for interstate pipelines that grant the pipeline the right to waive compliance with provisions of its tariff, typically for a given entity for a limited term.[252] We will continue to require transmission providers to record in a log such waivers, if granted in favor of an affiliate, and to post the log on the transmission provider's Internet Web site (however, if a specific waiver is approved by Commission order, such waiver need not be posted as it will already be public). We also add a definition of waiver to the regulatory text, to read: ''Waiver means the determination by a transmission provider, if authorized by its tariff, to waive any provisions of its tariff for a given entity.'' See section 358.3(m). Limiting the recording of waivers to those in favor of an affiliate will reduce the administrative burden on the pipeline, while capturing any instances of potential undue discrimination.

216. The Commission further determines that transmission providers need not post exercises of discretion that are within the scope of a tariff provision, unless in any given instance such posting is required under any other of our regulations. Such acts are already permitted by the tariff, and therefore fall within the scope of matters which the Commission has approved. Furthermore, a transmission provider, in particular a pipeline, makes many of these judgment calls every day on an ongoing basis; recording all these matters would place a substantial administrative burden on it.

217. The Commission declines to modify the proposed five-year retention requirement for recordation of the acts of waiver, as the five-year period will better enable Commission staff to monitor compliance.[253] Records may be examined only periodically, as when an audit is performed, and therefore earlier deletion could impede the necessary review. However, we observe that the volume of material to be retained should be substantially reduced, in light of the Final Rule's more circumscribed reporting requirements.

218. The Commission further clarifies that where the information called for under the posting requirements of the Standards is duplicative of information required to be posted by transmission providers under other provisions of our regulations or orders, such as the posting requirements of 18 CFR part 284 and 18 CFR part 37, only a single posting is required, and the transmission provider is to follow the posting requirements, inclusive of substance, venue, and timing, of the other regulations or orders. We believe the posting requirements contained in such regulations or orders are sufficient to fulfill the transparency goals of the Standards of Conduct. Inasmuch as discount information is required to be posted both for the gas and electric industries under other provisions of our regulations, we delete proposed section 358.4(b), which had set forth proposed requirements for the posting of discount information. Also, if a transmission owner is a member of an RTO or ISO and has not participated in the granting of a discount by the RTO or ISO, it would not be subject to the obligation to post such discounts.

2. Other Posting Requirements

a. Commission Proposal

219. In addition to the posting requirements relating to the non-discrimination provisions of section 358.4, the NOPR proposed streamlining and updating other posting requirements imposed on transmission providers by the Standards, and modifying them to take into account elimination of the concept of energy affiliates.

b. Comments

i. Contemporaneous Disclosure

220. INGAA requests the Commission to modify section 358.7(a), which requires the contemporaneous posting of improper disclosures of non-public transmission function information, to also provide for posting of a notice of a marketing function employee's receipt of non-public transmission function information (unless the Commission deletes proposed section 358.6(a)(2) of the No Conduit Rule prohibiting such receipt).[254] NGSA disagrees with INGAA that posting be made of a notice only, and not the disclosure itself, when the information received by a marketing function employee comes from a third party and not from the affiliated transmission provider.[255] It further requests that the Commission require that the marketing function employee immediately alert its affiliated transmission provider when it becomes aware it has received non-public transmission information, so that the transmission provider may post the disclosure.[256]

221. EEI supports the proposed provision requiring a transmission provider that discloses non-public transmission customer information to only post notice that such non-public transmission customer information was disclosed, and not the contents of the information. EEI proposes that a similar distinction be applied to Critical Energy Infrastructure Information (CEII) that has been inadvertently disclosed.[257] Likewise, National Grid proposes posting only a notice when disclosure of the information itself may breach some other public policy goal.[258]

222. ATC requests that the regulatory language be revised to indicate the transmission provider must post immediately ''upon discovery of disclosure,'' rather than upon the actual disclosure.[259]

ii. Specific Transaction Information

223. Many commenters request that the Commission clarify the exclusion to contemporaneous disclosure of non-public transmission function information that proposed section 358.7(b) provides for a marketing function employee's specific request for transmission service.[260] MidAmerican proposes that the definition of ''transmission customer'' be modified to add that they could be either affiliated or unaffiliated.[261] Although Ameren supports proposed section 358.7(b), it seeks clarification that the transaction-specific exclusion includes information that relates to its ability to take service on an ongoing basis, including outages or other system conditions.[262] Dominion Resources requests that the Commission modify the exclusion so that

[252] See, e.g., CenterPoint Energy Gas Transmission Company FERC Gas Tariff, Sixth Revised Volume No. 1, § 15.1.

[253] *See also* our discussion above concerning the five-year retention period for certain information exchanges under section 358.7(h).

[254] INGAA at 45; INGAA Response at 3.

[255] NGSA Reply Comments at 8.

[256] *Id.*

[257] EEI at 54.

[258] National Grid at 26–27.

[259] ATC at 2, 12.

[260] NOPR at P 58.

[261] MidAmerican at 18–19.

[262] Ameren at 33.

transmission function employees may discuss with marketing function employees any information that relates solely to service provided by the transmission provider to the employer of the marketing function employee, or requests for such service.[263]

iii. Voluntary Consent Provision

224. SCE requests that section 358.7(c), providing for a transmission customer's voluntary consent to disclosure of its customer information, be moved to section 358.5(c), which deals with the separation of functions under the Independent Functioning Rule, to suggest a limitation for non-affiliated customers.[264]

225. MidAmerican asks the Commission to clarify that the proposed voluntary consent provision is unnecessary for generation output where the host utility has a legal obligation to purchase the output of the generator. It also requests the Commission to modify the provision to clarify that the rule refers specifically to the transmission ''function'' and disclosure of ''non-public transmission'' information.[265]

iv. Identification of Affiliate Information

226. APGA and EPSA urge the Commission to retain the requirement to post organizational charts under section 358.7(e),[266] which deals with identification of affiliate information, and APGA requests the charts be color-coded as well.[267] APGA submits that the elimination of the energy affiliates concept does not eliminate the need for such a color-coded organizational chart.[268]

227. With respect to the requirement that a pipeline post the names and addresses of all its affiliates that employ or retain marketing function employees,[269] INGAA requests that the Commission confirm that the posting requirements are limited to information related only to those marketing affiliates that hold or control capacity on their affiliated pipeline, and that this posting requirement does not apply to a marketing function that does not hold capacity on its affiliated pipeline. INGAA requests that if the Commission so confirms, it should amend the provision to make the distinction clear.[270]

228. MidAmerican requests that proposed section 358.7(e)(2), which requires a listing of employee-staffed facilities shared by the transmission provider and marketing function employees, be limited only to those buildings where the transmission provider and its marketing function employees conduct customary duties, so as to exclude facilities where marketing function employees visit only on occasion.[271] Similarly, ATC requests that the Commission clarify the definition of ''employee-staffed facilities'' to limit its applicability to places at which both transmission function and marketing function employees have offices or are regularly located.[272]

v. Identification of Employee Information

229. MidAmerican requests that the provision in proposed section 358.7(f) that requires a transmission provider to post on its OASIS or Internet Web site the job titles and job descriptions of its transmission function employees, with the exception of clerical, maintenance, and field positions,[273] be clarified to indicate which positions are excluded as ''clerical, maintenance and field positions.''[274]

230. EEI believes that this posting requirement should conform to the employee functional approach. EEI asserts that the proposed requirement, if left in place, would grandfather much of the inefficiency and confusion of the corporate separation approach.[275]

vi. Timing and General Requirements of Postings

231. SCE recommends that the Commission eliminate the distinction in proposed section 358.7(g) between Internet Web sites and OASIS, and allow electric utilities as well as pipelines to post information on their Internet Web sites.[276] SCE states that, as a member of an ISO, it does not maintain its own OASIS.[277] ALCOA requests that the Commission recognize that marketing function employees are not granted access to OASIS, and provide an avenue for them to cure the prohibited disclosure of non-public information.[278]

232. With respect to the suspension of posting requirements during an emergency, SCE recommends that ''earthquake'' be added to the list of emergencies that qualify as allowing a transmission provider to suspend posting requirements.[279]

233. While supporting the Commission's decision to suspend posting requirements in the event of an emergency, Chandeleur requests clarification on the method of implementation for this requirement.[280] And E.ON states that the Commission should retain the existing exclusion from posting for emergency circumstances.[281]

vii. Other

234. Commenters raised concerns about potential conflicts between the proposed posting requirements in the NOPR and the posting requirements in the NAESB standards. The Arizona PSC urges the Commission to clarify, pending revision of the NAESB standards, that the existing NAESB standards do not impose a posting requirement that is different from the modified posting requirements under the new rules.[282] In addition, Chandeleur suggests that the Commission provide a waiver of those NAESB standards that relate to the format and content of postings which it contends will be outdated after the effective date of the new Standards.[283]

c. Commission Determination

i. Contemporaneous Disclosure

235. Section 358.7(a)(1) requires that if non-public transmission function information is disclosed to a marketing function employee, the transmission provider must post the information on its Web site. Some commenters object to the posting requirement where non-public information is disclosed by the transmission provider, arguing that such posting will provide an advantage to a competitor. We disagree. Such posting, by making the information public, will place the competitor and the transmission provider's affiliated marketer on an even footing. Therefore, this provision will be retained.

[263] Dominion Resources at 21.

[264] SCE at 7.

[265] MidAmerican at 19.

[266] APGA at 3–4; EPSA at 11.

[267] APGA at 3–4.

[268] APGA at 3–4.

[269] NOPR at P 59.

[270] INGAA at 54–55.

[271] MidAmerican at 19–20.

[272] ATC at 15.

[273] NOPR at P 59–60.

[274] MidAmerican at 11–12.

[275] EEI at 55–56.

[276] The definition of Internet Web site in proposed section 358.3(b) indicated that pipelines post the information required under sections 284.12 and 284.13 on their Internet Web site, and the definition of OASIS in proposed section 358.3(e) indicated that public utilities post the information required under part 37 on their OASIS. Various subsections of proposed section 358.7 continued this distinction between pipelines and public utilities for the posting requirements under the Standards. *See, e.g.,* proposed sections 368.7(a)(1), (a)(2), (c), (d), (e)(1), (e)(2), (f)(1), (f)(2) and (g)(1).

[277] SCE at 10.

[278] ALCOA at 7–8.

[279] SCE at 11.

[280] Chandeleur at 7.

[281] E.ON at 22–23.

[282] Arizona PSC at 7; *see also* EEI at 53.

[283] Chandeleur at 8.

236. Western Utilities and INGAA raise concerns over the posting provision in instances where a marketing affiliate receives non-public transmission function information from a third party. Since we are eliminating that particular prohibition of the No Conduit Rule, no change to the posting provision is necessary. However, we note that if a transmission provider uses anyone as a conduit for improper disclosures, such an event would be considered an improper disclosure and should be posted.

237. The Commission proposed in section 358.7(a)(2) that only a notice be posted in the event non-public transmission customer information is improperly disclosed, rather than requiring posting of the disclosure itself, to prevent a further breach of confidentiality. We extend this distinction between posting of a notice and posting the disclosure itself to include CEII,[284] as well as any other information that the Commission by law has determined is to be subject to limited dissemination. However, we decline to extend it to cover information where disclosure may be deemed to breach some other public policy goal, as requested by National Grid. This standard is too imprecise to have practical application. If a transmission provider is concerned about disclosure in any given instance, it may seek guidance from the Commission.

238. We decline to adopt ATC's proposal that with respect to non-public transmission information that was improperly disclosed, the transmission provider must post it immediately ''upon discovery of disclosure,'' rather than upon the actual disclosure. The provision by its terms imposes the posting requirement on a transmission provider that wrongfully discloses such information, and it would be anomalous to assume the transmission provider was not aware of its own actions. A corporation can only act through its agents and employees, and those actions are taken on behalf of the corporation. Therefore, knowledge of the disclosure is imputed to the transmission provider, which is responsible both for the disclosure and for the posting.

[284] This limitation does not affect our determinations made elsewhere regarding the need to disclose information that may contain CEII, or the appropriate methods for entities to access such CEII, nor our adoption of mandatory reliability standards for CEII. *See, e.g.*, Order 890 at P 403–404; *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 73 Fed. Reg. 7368 (Feb. 7, 2008), 122 FERC ¶ 61,040, *reh'g denied and clarification granted*, Order No. 706–A, 123 FERC ¶ 61,174 (2008).

ii. Specific Transaction Information

239. Section 358.7(b) provides an exemption to the disclosure requirement for requests for transmission service made by a marketing function employee. The Commission agrees that the language should be modified to clarify that transmission function employees may discuss with marketing function employees the latter's specific request for transmission service (but not non-public matters beyond the specific request, such as outages or other system conditions). We therefore add the following sentence: ''A transmission provider's transmission function employee may discuss with its marketing function employee a specific request for transmission service submitted by the marketing function employee.''

iii. Voluntary Consent Provision

240. The Commission declines to move the provision regarding the posting of voluntary employee consents in section 358.7(c) to the Independent Functioning Rule, as requested by SCE. The provision in question relates to posting, and is therefore appropriately included in the Transparency Rule. We also decline to include a specific exclusion to the customer consent provision for contracts involving generator output, as requested by MidAmerican. The posting requirements are general in application, and ought not to be so detailed as to cover every special circumstance that may apply to only one or a limited number of transmission providers. To do so would make the regulations unwieldy and subject to constant change. Therefore, we decline to include an exclusion covering a customer's consent for contracts involving generator output.

241. Furthermore, we decline to distinguish between affiliated and non-affiliated customers in connection with the voluntary consent provision. The intent of the provision is to permit any customer to disclose customer information to marketing function employees of the transmission provider, should it desire to do so. Of course, an affiliated customer will already be aware of information pertaining to its own marketing affiliate, but there conceivably could be other marketing affiliates of the same transmission provider as to which the customer may wish to give its consent for disclosure.

242. The Commission agrees that the voluntary consent provision refers to *non-public* customer information (including a customer's transmission request and accompanying information), and adds this phrase to section 358.7(c).

iv. Identification of Affiliate Information

243. Section 358.7(e)(1) provides that a transmission provider post the names and addresses of all its affiliates that employ or retain marketing function employees. The Commission declines to revert to a requirement to post an organizational chart of all affiliates of a transmission provider, and further declines to extend this to a color-coded chart. With the elimination from the Standards of the concept of energy affiliates, it is only necessary to be concerned with the marketing affiliates of a transmission provider. Therefore, an entire organizational chart is unnecessary, and an undue burden on transmission providers.

244. With respect to INGAA's request that information need not be posted about affiliates that do not, for instance, hold or control capacity on its affiliated pipeline, the Commission notes that the proposed provision applies to affiliates ''that employ or retain marketing function employees.'' If an activity falls within one of the exclusions to the definition of marketing functions set forth in proposed section 358.3(c), its employees will not by definition be marketing function employees, and the posting rule would not apply. If, however, the activities do not fall within any of the exclusions to the definition, and the affiliate employs or retains marketing function employees, the posting provision would apply.

245. We agree with MidAmerican and ATC that the posting requirements in section 358.7(e)(2) regarding shared facilities need not include facilities where transmission function employees and marketing function employees do not both transact their job-related activities, and modify the regulatory text accordingly. We further clarify that the phrase ''employee-staffed facilities'' is meant to exclude facilities where individuals do not typically transact business, such as substations.

v. Identification of Employee Information

246. The Commission agrees with EEI that the proposed provision in section 358.7(f)(1) covering the posting of job titles and names of transmission function employees should conform more closely to the employee functional approach. Furthermore, in accordance with the clarification made in this Final Rule, such jobs as maintenance and field positions are not considered transmission functions, unless the employees also engage in the day-to-day operation of the transmission system.

Therefore, we will modify the wording of this provision to refer only to ''transmission function employees,'' and delete the reference to clerical, maintenance and field positions.

vi. Timing and General Requirements of Postings

247. Section 358.7(g)(1) requires updated posting on a transmission provider's OASIS or Internet Web site. The Commission agrees with SCE that transmission owners who are members of RTOs or ISOs might not have their own OASIS. Furthermore, some interested entities or individuals might not have access to a transmission provider's OASIS. We therefore modify the venue for posting to require that the posting of information required under the Standards for both public utilities and interstate pipelines is to be made on the transmission provider's Web site, where it will be accessible to all interested entities. The various sections within the Transparency Rule are amended to conform to this change.

248. Section 358.7(g)(2) provides suspension of postings in the case of emergencies. The Commission does not deem it necessary to list every conceivable natural disaster in this provision, but will add ''earthquakes'' to the list, as requested by SCE. Chandeleur requests clarification as to the method of implementation of this provision. In the event the transmission provider needs suspension of postings beyond one month, it should publicly file with the Commission for a further period of suspension, in accordance with the provisions of part 385 of the Commission's regulations.

vii. Other

249. Chandeleur suggests the Commission provide an anticipatory waiver of any changes to NAESB standards which may be made relating to the format and content of posting requirements, should they be inconsistent with the Standards here adopted. The NAESB standards currently adopted by the Commission are set forth in 18 CFR sections 38.2 and 284.12 (2008), and relate to matters other than the Standards of Conduct. The provisions applicable to electric utilities in section 38.2 include the Business Practices for Open Access Same-Time Information Systems (OASIS), which relate to requests for transmission service. The provisions applicable to pipelines in section 284.12 include information which is to be posted on the pipeline's Internet Web site, covering such matters as the name of shippers taking service, the rate charged, the duration of the contract, receipt and delivery points, quantity, whether the shipper is an affiliate of the pipeline, and the like. These postings generally differ from the postings required under the Standards of Conduct. As discussed above, to the extent any of the information required under the Standards of Conduct is also required under other regulations or orders, duplicative postings are not required. Therefore, no anticipatory waiver of the type requested by Chandeleur is needed or appropriate.

F. Other Definitions

250. In addition to the definitions discussed above, the NOPR either carried over or modified a number of definitions contained in the current Standards, including ''affiliate,'' ''transmission,'' ''transmission customer,'' ''transmission function information,'' and ''transmission provider.''

1. Affiliate

a. Commission Proposal

251. The Commission proposed to modify its definition of ''affiliate'' to conform to the new definition of affiliate set forth in 18 CFR 35.43(a)(1).[285] The only addition in the NOPR to that definition was the inclusion of ''a division that operates as a functional unit of the specified company.'' See proposed section 358.3(a).

b. Comments

252. INGAA contends that the NOPR changed the definition of affiliate to be consistent with an order that addresses only electric transmission providers, and therefore is not a definition fairly applicable to the natural gas industry.[286] INGAA and Iroquois request that the rules return to the longstanding definition of affiliate in the Standards and also retain the prior, integrally related definition of ''control.''[287] Iroquois adds that the proposed definition does not reflect the established scheme's rebuttable presumption of control, thereby expanding the reach of the Standards. To the extent the Commission declines to revert to the prior definitions of affiliate and control, Iroquois requests that the Commission modify the proposed definition to reinstate the concept that the definition of control establishes a rebuttable presumption, and also continue any exemptions from the definition of affiliate that were granted under the prior Standards.[288]

253. Both INGAA and Iroquois request that the Commission provide clarification as to how the definition would apply to interstate pipelines jointly owned by two or more otherwise non-affiliated companies.[289] INGAA would like confirmation that, in the event an affiliate of one joint owner of a pipeline holds capacity on that pipeline, such relationship does not create an affiliation between the affiliates of the entities who are the joint owners.[290]

254. TDU Systems asserts that the definition of affiliate should not include members of generation and transmission cooperatives.[291]

255. Arizona PSC proposes a modification to the proposed definition to cure what it finds to be an inconsistency between the NOPR's definition and the definition of ''affiliate'' in Order No. 707. It would eliminate the words ''division that operates as a functional unit'' from proposed section 358.3(a)(1). Both Arizona PSC and EEI contend that this deletion is consistent with the NOPR's employee functional approach.[292]

c. Commission Determination

256. Much of the concern over the definition of affiliate appears to stem from a misapprehension that affiliates themselves are still subject to the Independent Functioning Rule. As discussed throughout this Final Rule, it is only marketing function employees who are required to operate independently of a transmission provider's transmission function employees. Nonetheless, the concept of affiliate does retain importance, since marketing function employees by definition must be employed by the transmission provider *or by its affiliates* (unless the marketing function employees are contractors).[293]

257. Because the Standards follow a different regulatory scheme than Order

[285] This definition was promulgated in *Cross-Subsidization Restrictions on Affiliate Transactions,* Order No. 707, 73 FR 11,013 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,264 (2008), *order on reh'g,* 73 FR 43,072 (July 24, 2008), FERC Stats. & Regs. ¶ 31,272 (2008).

[286] INGAA at 12–13; *see also* Williston at 12.

[287] INGAA at 12–13; Iroquois at 14.

[288] Iroquois at 7–13.

[289] *Id.* 13–14; INGAA at 13.

[290] INGAA at 13. For example, INGAA posits, if non-affiliated Companies A and B form a joint venture that holds Pipeline C, INGAA contends that transmission relationships between a marketing affiliate of Company A and Pipeline C do not create an affiliation between that marketing affiliate and other affiliates of Company B, because there is no common ownership and control between the marketing entity and Company B's affiliates. *Id.*

[291] TDU Systems at 13–14.

[292] Arizona PSC at 6–7; EEI at 47.

[293] Inclusion of contractors in the definition of marketing function employee is discussed in the section entitled Elimination of Shared Employees Concept.

No. 707, the definition of affiliate here does not necessarily need to be identical to the more detailed definition set forth in Order No. 707. As regulated entities have become familiar with the existing definition, the Commission sees no necessity to alter it. Therefore, the Commission will reinstate the major features of the definition of ''affiliate'' found in the existing Standards, including the ability to rebut a presumption of control. See section 358.3(a)(1). The requests for the Commission to comment on the specifics of hypothetical corporate arrangements are accordingly answered by reference to that provision.

258. The existing definition of exempt wholesale generators refers both to regulations and the FPA as the source of the definition, and does not provide for updating. We modify the definition so as to refer to the currently applicable section of the regulations defining exempt wholesale generators, section 366.1, and provide that such definition or any successor definition shall govern. See section 358.3(a)(2).

259. Arizona PSC and EEI would eliminate the inclusion of a division (as opposed to a separate corporate entity) from the definition of affiliate. This inclusion, which is contained in the existing Standards, covers those marketing function employees who may be employed by the transmission provider itself, rather than by an affiliate of the transmission provider. Therefore, the provision will be retained.

2. Transmission

a. Commission Proposal

260. The Commission proposed to streamline the current definition of transmission by defining it as ''electric transmission, network or point-to-point service, ancillary services or other methods of electric transmission, or the interconnection with jurisdictional transmission facilities, under part 35 of this chapter; and natural gas transportation, storage, exchange, backhaul, or displacement service provided pursuant to subpart A of part 157 or subparts B or G or part 284 of this chapter.'' See proposed section 358.3(f).

b. Comments

261. Many commenters raise concerns related to the Commission's inclusion of ancillary services in the definition of transmission. TAPS suggests that the Commission distinguish between a transmission provider's offering ancillary services to its customers pursuant to its Open Access Transmission Tariff, which it states is a transmission function, and offering ancillary services competitively, which it views as a marketing function.[294] NCPA requests that in those markets where ancillary services are procured pursuant to a bidding process, the rules treat ancillary services as part of the marketing function and not as part of the transmission function.[295] EEI requests clarification that the definition covers only those ''ancillary services'' and ''interconnection'' that are offered in connection with jurisdictional transmission service.[296] Wisconsin Electric requests that the Commission deem the provision of ancillary services as a function outside of the operation of the Standards.[297]

262. NiSource requests clarification as to whether generation is considered a subtype of transmission. It asserts that generation information is not a subtype of transmission or marketing function information and therefore should not be subject to the rules or included in its exclusions.[298]

c. Commission Determination

263. The Commission agrees that inclusion of ancillary services in the definition of transmission, which is carried forward from the existing Standards, needs clarification. Ancillary services can either be transmission or covered under the definition of marketing functions, as discussed above. Therefore, we clarify that ancillary services, as used in the definition of transmission, refers to the use of an integrated public utility's own generation or demand response resources to provide ancillary services, and does not refer to the sale for resale of generation or demand response resources for ancillary services purposes.

264. NiSource raises a concern as to whether the proposed exclusion for communications regarding generation dispatch in proposed section 358.7(h) suggests we regard generation as a form of transmission. NiSource's concern is addressed by the modifications made in this Final Rule to that exclusion; however, we further clarify that generation is typically not a transmission function. Of course, operation of the transmission system may impact generation, and therefore some transmission function information may well implicate generation concerns. It was for that reason the above-cited exclusion was added to the Standards. See section 358.7(h).

265. The Commission removes the reference to subpart A of part 157, in accordance with its elimination of this reference from section 358.1(a), but otherwise adopts the NOPR definition of transmission. See section 358.3(f).

3. Transmission Customer

a. Commission Proposal

266. The Commission proposed to carry forward the existing definition of ''transmission customer'' to mean ''any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending requests for transmission service or for information regarding transmission.'' See proposed section 358.3(g).

b. Comments

267. MidAmerican requests that the Commission modify this definition so that it expressly includes affiliated and non-affiliated customers, shippers or designated agents.[299]

c. Commission Determination

268. The Commission adopts proposed section 358.3(g). MidAmerican's requested addition is unnecessary, as on its face the definition of transmission customer does not distinguish between affiliated and non-affiliated customers. To the extent clarification on this point is desired, we clarify that all customers that fit the definition are included.

4. Transmission Function Information

a. Commission Proposal

269. The Commission proposed to define ''transmission function information'' to mean ''information relating to transmission functions,'' thus keying off the new definition of ''transmission function'' set forth in the proposed Standards. See proposed section 358.3(j).

b. Comments

270. Several commenters request that the Commission include in its definition specific examples or categories of information that it deems to be transmission information.[300] EEI and Southern Co. Services suggest that the Commission use the guidance found in section 358.5(b)(1) of the current Standards as a basis for amending the definition,[301] and SCE provides a

[294] TAPS at 31–33.

[295] NCPA at 3–4.

[296] EEI at 44–46.

[297] Wisconsin Electric at 3–4.

[298] Nisource at 14–16.

[299] MidAmerican at 10–11.

[300] ATC at 11–12; EEI at 46; Southern Co. Services at 26–27; SCE at 10–11.

[301] EEI at 46; Southern Co. Services at 26–27.

proposed amendment that includes its recommended examples.[302]

271. National Grid and PSEG inquire whether the scope of the definition is the same as, more broad or more narrow than the scope of the definition of ''transmission'' information in the current Standards.[303]

272. Southern Co. Services asserts that proposed sections 358.6(a)(1) and 358.7(a) create ambiguity as to whether all ''customer information'' is ''transmission information,'' and requests clarification of the definition of ''transmission information.'' [304] Bonneville requests clarification as to whether the definition is limited to non-public transmission information.[305] And TDU Systems requests clarification that accounting records necessary for rate design do not constitute transmission function information.[306]

273. Spectra requests the Commission to amend the definition to indicate it does not include information relating to a marketing function employee's specific request for transmission service or interconnection.[307]

c. Commission Determination

274. The Commission adopts the NOPR definition of transmission function information as information relating to ''transmission functions,'' which is the core definition where the crux of the requirements of the Independent Functioning Rule and the No Conduit Rule is found, and where any issues regarding interpretation should be focused. Indeed, as there is no debate on the meaning of ''information,'' the Commission could have eliminated section 358.3(j) entirely. The Commission is retaining this section, however, to reinforce the prohibition on the improper disclosure of non-public transmission function information.

275. Nevertheless, to provide clarity, the Commission will give examples of transmission function information, drawn from the current Standards. These include, for example, available transmission capability, price, curtailments, storage, and balancing. In response to the request for clarification by National Grid and PSEG, we observe that not all elements found in the existing Standards are relevant, due to the restriction in this Final Rule of the term ''transmission functions'' to day-to-day operations.

276. We clarify that transmission customer information is a subset of transmission function information, as it is submitted in connection with a request for transmission service. We also clarify that rate design, in and of itself, is not a transmission function under the Standards.

277. The term transmission function information is not limited to non-public information; however, it is only non-public transmission function information which the No Conduit Rule prohibits being passed to marketing function employees.

278. Spectra requests the definition be amended to exclude information relating to a marketing function employee's specific request for service. We decline to do so. Such information is indeed transmission function information, as discussed above. Spectra's concerns, however, are addressed by section 358.7(b), which permits discussions regarding such requests between transmission function and marketing function employees.

5. Transmission Provider

a. Commission Proposal

279. The Commission proposed to define ''transmission provider'' as:

(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or

(2) Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(3) A transmission provider does not include a natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has no exclusive franchise area, no captive ratepayers and no market power.

See proposed section 358.3(k).

b. Comments

280. Hampshire requests that subsection (3) of the definition be modified to apply to ''storage companies that already have been authorized by FERC to charge market-based rates based on a showing that they lacked market power,'' arguing the definition should not include the additional criteria listed. The criterion that the storage facility not have captive customers and not have market power is duplicative, according to Hampshire, because if the facility has captive customers then it has market power by definition. Hampshire further contends that the limitation against exclusive franchises is extraneous because the Natural Gas Act does not permit exclusive franchises.[308]

281. The US DOI argues that the proposed language does not recognize that certain federal agencies may own transmission facilities without having functional responsibility for them. It requests that the Commission clarify that it is the operator of the transmission facility, and not the federal agency that owns the transmission facility, that is the transmission provider subject to the Standards.[309]

c. Commission Determination

282. As a preliminary matter, the Commission will delete the reference to Part 157 from the definitions of transmission and transmission provider. See sections 358.3(f) and (k). This corresponds to our deletion of the same reference in section 358.1, the applicability provisions of the Standards, as discussed above.

283. We will also accept Hampshire's proposed modification with respect to exclusive franchises and the Commission's jurisdiction over storage facilities under the NGA. While the Commission does not necessarily agree with Hampshire's description regarding market-based rates,[310] the Commission does agree that the exclusion of natural gas storage providers authorized to charge market-based rates, which is an exclusion carried over from Order Nos. 497 and 2004 and not opposed in the comments, needs no further qualification. We modify proposed section 358.3(k)(3) accordingly.

284. Lastly, we clarify that if a transmission provider is merely an owner of facilities but performs none of the functions of a transmission provider, it is in the same position as a public utility transmission owner that participates in a Commission-approved RTO or ISO. Section 358.1(c) provides that such a participating transmission owner may seek a waiver from the Standards. Similarly, if any other transmission owner meets the definition of transmission provider but does not operate or control its transmission system and has no access to transmission function information, it may request a waiver from the Standards, in whole or in part.

G. Per Se Violation

285. In the course of the NOPR's discussion on the need for reform of the Standards, the Commission observed

[302] SCE at 10–11.

[303] National Grid at 20–22; PSEG at 16–17.

[304] Southern Co. Services at 27.

[305] Bonneville at 5–6.

[306] TDU Systems at 16.

[307] Spectra at 11–12.

[308] Hampshire Gas at 9–12.

[309] US DOI at 1–2.

[310] *See Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, 71 Fed. Reg. 36612 (June 27, 2006), FERC Stats. & Regs. ¶ 31,220 (2006).

that while the Standards establish *per se* rules, the Commission still possesses statutory authority to rectify and sanction, where necessary, instances of undue discrimination and preference even if they are not specifically addressed in the *per se* regulations of the Standards. This authority is derived from sections 205 and 206 of the FPA and sections 4 and 5 of the NGA.

1. Commission Proposal

286. No proposal was made in the NOPR regarding per se rules; the Commission merely pointed out the fact that the proposed Standards, just as do the current Standards, contain *per se* rules.

2. Comments

287. Several commenters request that the Commission clarify how the proposed *per se* rules will be enforced. Idaho Power and Puget Sound requests confirmation that transmission providers will continue to have the opportunity to defend themselves against allegations of violations of the Standards, and that it is not the case that the Commission intends there will be violations of the *per se* rules ''for which no further investigation would be needed.'' [311]

288. INGAA and LPPC likewise note confusion about the NOPR's use of ''*per se*'' because, they contend, in other contexts the term refers to the establishment of a set of facts that automatically creates a violation of law without reference to other or additional facts. INGAA urges that the Commission reject a *per se* approach and adopt a ''rule of reason'' approach to ascertaining violations of the Standards, in which the regulated entity may show legitimate purpose for or lack of harm caused by the subject behavior.[312]

289. Commenters also raise concerns about the interplay between the Standards and the statutory prohibitions on undue discrimination and preference. Specifically, many commenters argue that the *per se* concept means a transmission provider may be accused of undue discrimination and preference even where its activity was permissible under the Standards.[313] Southern Co. Services would like the Commission to clarify that the Standards occupy the field for the potential types of undue discrimination and preference addressed in the Standards, so that compliance with the Standards would create a safe harbor with respect to activities that fall within the scope of the Standards.[314]

290. Ameren cautions the Commission against arbitrarily expanding the scope of the behavior that is deemed to violate the Standards on a case-by-case basis, noting that this could raise notice and due process issues.[315] E.ON asserts that an undue preference analysis for subjects already covered by the Standards would greatly complicate training efforts.[316]

291. Both INGAA and LPPC note that many of the rules within the Standards are not amenable to a *per se* approach to enforcement because they are non-specific and broad.[317]

292. Puget Sound raises additional questions about the enforcement of the Standards, *e.g.*, how a *per se* violation may be distinguishable from noncompliance with other rules; whether disclosure by a transmission provider of non-public information to its marketing function is a *per se* violation and, if so, does the posting requirement cure the *per se* violation; whether a marketing function employee who receives transmission information from an unaffiliated third party is guilty of a *per se* violation; and whether inadvertent disclosure of non-public information to a marketing function employee is sanctionable.[318]

3. Commission Determination

293. In response to commenters' confusion regarding the NOPR's reference to the term *per se*, the Commission clarifies that we did not mean to establish a new standard of review or impose different evidentiary burdens specific to these rules. Under these regulations, the Commission would still have to prove that a violation occurred, and an accused maintains the right to demonstrate that such a violation did not occur. Further, if it is established that a violation has occurred, such matters as whether the violations were inadvertent or, under the facts of the case, harmless, will be taken into account by the Commission in determining whether any remedy or sanction is appropriate.

294. Some commenters request the Commission to declare that the Standards occupy the field with respect to the area of undue preferences, and that matters not specifically covered by the Standards may not be found to be violations of the undue preferences prohibition in the FPA or the NGA. This we decline to do. There are potentially an infinite number of ways undue preferences might arise, and the Standards are not intended to be exhaustive. It is possible that an entity might embark on a course of conduct not contemplated by the Standards, which could be found upon investigation to constitute a violation of the statutory undue preference prohibitions. In such case, the entity's compliance with the Standards in other aspects would not serve as a defense.

295. Puget Sound asks whether posting would cure a transmission provider's disclosure of non-public transmission function information to a marketing function employee. Posting the information does not change the fact that a violation occurred, but it would be a vital consideration that the Commission would certainly take into account in deciding whether any remedy or sanction would be appropriate. We observe also, by way of further clarification, that if the transmission provider failed to post the disclosed information, this would constitute a second and separate violation, in this case of section 358.7(a)(1).

H. Training Requirements

1. Commission Proposal

296. The NOPR proposed modifications to the training requirements for the Standards, requiring annual training for transmission function employees, marketing function employees, officers, directors, supervisory employees, and any other employees likely to become privy to transmission function information; and requiring training on the Standards to new employees within the first 30 days of their employment. See proposed section 358.8(c)(1).

2. Comments

297. Commenters raised various concerns about the scope of the proposed training requirements. Destin believes that the requirements are overly broad and unduly burdensome; arguing that a transmission provider cannot engage in affiliate abuse with employees that do not use its transmission services.[319] Ameren states that the Commission's training requirement should apply only to employees who engage in transmission or marketing functions, as well as officers, directors and support or other employees who can be expected to have access to non-public transmission information.

[311] Idaho Power at 4–5, *quoting* NOPR at P 55; Puget Sound at 9–10.

[312] INGAA at 3–4.

[313] Southern Co. Services at 23–24; Ameren at 6,8; E.ON at 7; EEI at 41–42.

[314] Southern Co. Services at 23–24; *see also* EEI at 41–42; E.ON at 7.

[315] Ameren at 6, 18.

[316] E.ON at 8.

[317] INGAA at 8; LPPC at 17–18.

[318] Puget Sound at 10.

[319] Destin at 8.

Ameren also states that a transmission provider should provide focused levels of training to certain specific classes of employees.[320]

298. Commenters seek clarification as to which employees must be trained, and some suggest modifications to the proposed regulatory text. MidAmerican and National Grid seek confirmation that the rule excludes supervisors of departments that have nothing to do with transmission.[321] To clarify the regulatory text, National Grid proposes setting out that the training requirement applies to (i) transmission function employees; (ii) marketing functioning employees; and (iii) officers, directors, supervisory employees, and any other employees likely to become privy to transmission function information.[322]

299. Some commenters request clarification as to which types of employees are captured by the ''likely to become privy to transmission function information'' language in sections 358.8(b)(2) and 358.8(c)(1).[323] Xcel urges the Commission to modify proposed section 358.8(b)(2) by requiring a transmission provider to distribute materials only to those employees likely to become privy to non-public transmission information, instead of to any and all transmission function information.[324]

300. Commenters urge the Commission to modify the proposed regulation so as to eliminate the requirement to train marketing function employees. INGAA requests that marketing function employees should be excluded, arguing such training is infeasible and unnecessary in certain corporate structures.[325] In addition, Williston questions the need to conduct annual training for employees who do not have access to non-public or privileged information and/or marketing function employees. If a transmission provider is required to train marketing function employees of its affiliates, Williston asserts this is an expansion of the current rules. If not, Williston questions whether a transmission provider would have employees that fit under the definition of marketing function employees that would need to be restricted from having access to company information.[326]

301. Commenters raise concerns over whether field and maintenance employees fall into the training requirements and request that the Commission exclude these employees. INGAA notes that field and maintenance employees may pick up transmission information in the nature of irrelevant raw data from time to time, and could therefore fall within the training requirement as set forth in the proposed provision.[327] INGAA argues that these employees do not have access to information of a commercial value and including them within the training requirement would be an unwarranted burden. INGAA requests that the proposed provision be amended to exclude these employees.[328]

302. Commenters also request clarification on the application of these training requirements to agents, contractors, and consultants.[329] TDU Systems recommends that agents, contractors, and consultants be trained only once per year, even if engaged by more than one transmission provider during that time, provided that they receive a copy of the current written compliance procedures for each of the relevant transmission providers.[330] INGAA requests that the Commission clarify that contractor training may be limited to those specific contractors who may be considered transmission function employees if they worked directly for the pipeline.[331]

303. Commenters request additional guidance on the timing of the required training. National Grid requests confirmation that companies may satisfy the annual training requirement by providing training once a year for all employees, rather than providing training on a rolling basis, to ensure that each relevant employee attends training at least once within each 365-day cycle.[332] Ameren requests that the Commission clarify that employees trained within 12 months of the Final Rule's issuance do not need to be trained again until a year passes from the date of their most recent training.[333]

304. E.ON urges the Commission to clarify that annual Standards training should be mandatory only for transmission and marketing function employees, and that employees who do not engage in transmission and marketing functions should be allowed to be trained on a less frequent basis.[334] NiSource requests that the requirement in section 358.8(c) that new employees be trained within 30 days of hire be modified to require training within 60 days of hire, arguing that the 30 day limitation is overly burdensome.[335]

305. The PUC of Ohio proposes that the Standards include a requirement that transmission providers post on their Internet Web sites a general overview of their unique training programs and schedules and the name of the designated chief compliance officer.[336]

3. Commission Determination

306. The Commission endeavored in the NOPR to limit training to those employees who would be most likely to be exposed to transmission function information, or those to whom the disclosure of such information is strictly prohibited. Obviously, transmission function employees and marketing function employees are the two core categories of employees that should be most cognizant of the rules. Although we have deleted the prohibition against marketing function employees receiving transmission function information, due to the possibility such receipt could be inadvertent, it is expected that if someone attempted to pass such information to a marketing function employee, the marketing function employee would not only refuse it but would report the individual to the company's chief compliance officer or other appropriate individual.

307. Officers, directors, and supervisory employees also have a clear need for an understanding of the Standards, as it is likely they will either be in a position to interact with both transmission function employees and marketing function employees, or be responsible for responding to any questions or concerns about the Standards from the employees who report to them. Other employees likely to become privy to transmission function information will vary from company to company; likely categories would include rate and regulatory personnel, lawyers, accountants, risk management personnel, and the like. This list is by no means exhaustive, but rather is included for illustrative purposes.

308. Either a transmission provider or its affiliate should provide training to marketing function personnel employed by the affiliate; failure to do so would leave a major class of employees without the requisite training. As to whether field and maintenance workers should receive training, that would depend on the circumstances of the

[320] Ameren at 31–32.

[321] MidAmerican at 20–21; NationalGrid at 22.

[322] NationalGrid at 22.

[323] MidAmerican at 20–21; Williston at 17–18.

[324] Xcel at 22.

[325] INGAA at 49–50.

[326] Williston at 17–18.

[327] INGAA at 47.

[328] *Id.* at 47; *see also* Vectren at 9–10.

[329] INGAA at 48; TDU Systems at 16–17.

[330] TDU Systems at 16–17.

[331] INGAA at 48.

[332] National Grid at 25–26.

[333] Ameren at 35.

[334] E.ON at 25.

[335] NiSource at 28.

[336] PUC of Ohio at 3.

particular transmission provider. As noted above, field and maintenance personnel are not considered transmission function employees if they are functioning in their stated capacity and do not engage in the day-to-day operation of the transmission system. However, if it is likely they may become privy to transmission function information, then training on the Standards would be appropriate and called for under section 358.8(c)(1).

309. Commenters seek clarification regarding the training of agents, contractors and consultants. If such individuals are acting within one of the categories specified for the provision of training to employees, then such individuals should receive the training as if they were permanent hires. If the consultants are hired on a short-term basis and provide proof that they have received the appropriate training from another transmission provider within the requisite period, then further training would not be necessary until the following year, although they should receive the specific written compliance materials applicable to each transmission provider. Furthermore, it is not necessary for the transmission provider to track annual dates for each employee; if the transmission provider prefers, it may train all its employees, or all its employees in a given category, at a certain time each year. New employees, after their initial training, can be fit within this schedule. However, the employee should not go longer than a year without participating in training.

310. We decline to lengthen the period for initial training from 30 days to 60 days, as requested by one commenter. It is especially important for new hires to receive the training, as they may not have been exposed to it before, as would be the case with existing employees. We also note that it is unnecessary to add a requirement to post training programs on the transmission provider's Internet Web site. Training is for the benefit of the transmission provider's employees, not the public at large. And as proposed section 358.8(c)(2) already requires posting the name of the transmission provider's chief compliance officer, it is unnecessary to add a further requirement in this regard.

I. Compliance Date

1. Commission Proposal

311. The NOPR did not set forth a date by which existing transmission providers must be in full compliance with the new Standards (as noted above, a new transmission provider must be in compliance on the date it commences transmission transactions with an affiliate that engages in marketing functions).

2. Comments

312. Commenters propose that the Commission allow 60 to 90 days after issuance of the Final Rule for its implementation by existing transmission providers.[337]

3. Commission Determination

313. The Commission determines that the new Standards shall be effective 30 days from the date of publication in the **Federal Register**, and so provides in the section on Effective Date and Congressional Notification. The Commission further determines that transmission providers must be in full compliance with the Standards by that date, with the exception of the posting and training requirements, with which transmission providers must be in full compliance no later than 60 days from publication in the **Federal Register**, as set forth in that same section. The Commission does not envision that extensive changes would be needed by transmission providers in order to come into compliance; many if not most of the procedures they already have in place to comply with the existing Standards will be transferable with little modification.

J. Miscellaneous Matters

1. Comments

314. Commenters raise a variety of miscellaneous matters as follows:

- Ameren asks the Commission consider extending the use of the employee functional approach to the Code of Conduct/affiliate restrictions promulgated by Order No. 697 and set forth in 18 CFR 35.39 of the Commission's regulations.[338]
- NGSA asserts that third parties should never be privy to non-public pipeline information. It contends that in the rare circumstances in which a pipeline finds it necessary to share non-public information with a third party (*e.g.*, joint project development planning), the third party should be subject to a confidentiality agreement.[339]
- PUC of Ohio asserts that civil forfeiture should not be recovered by the operating company in such a way that the expense of recovery is passed to the customers (as opposed to the shareholders). It proposes that the Commission require ''ring fencing'' so that an operating company and its customers are insulated from other operations involving the corporation, and are only allocated those expenses that relate directly to an established benefit.[340]
- NARUC recommends that the Commission monitor implementation of the Standards by requiring filed compliance plans and through the conduct of regular audits and reports.[341]
- MidAmerican requests that the Commission clarify that Order No. 2004 and any Commission guidance and case law issued pursuant to it should not constitute precedent for the new Standards. MidAmerican is concerned that unless the Commission clearly rescinds its prior precedent developed around Order No. 2004, companies will struggle to determine whether a precedent applies to a provision in the new Standards.[342]
- E.ON requests that the Commission clarify whether transmission providers can continue to rely on existing guidance regarding public meetings convened by utility companies. If the Commission concludes that it is appropriate to start from a ''clean slate'' on public meetings, then E.ON requests that the Commission provide additional relevant guidance.[343]

2. Commission Determination

315. Ameren's request to extend the employee functional approach, NGSA's concerns regarding the dissemination of information to non-affiliated third parties, and the PUC of Ohio's concern regarding the recovery of civil forfeitures, are all beyond the scope of this Final Rule, and the Commission declines to adopt their proposals or modify the Standards accordingly.

316. The Commission also declines to impose the filing of compliance plans with the Commission, as requested by NARUC. Under section 358.8(b)(2), transmission providers are required to post on their Internet Web site written procedures implementing the Standards. It is thus unnecessary to require additional filings with the Commission. The Commission, however, is committed to ensuring compliance with its rules and regulations, and will thus seriously consider auditing on a regular basis transmission providers' compliance with the Standards. Also, of course, the Commission will investigate any credible allegation of violation of the Standards. To that end, the Commission

[337] TDU Systems at 17; Wisconsin Electric at 9–10; Ameren at 35.

[338] Ameren at 36.

[339] NGSA at 16.

[340] PUC Ohio at 3.

[341] NARUC at 4–5.

[342] MidAmerican at 5–7.

[343] E.ON at 25.

reminds market participants of the Enforcement Hotline,[344] which was established twenty years ago to enforce the promulgation of the original Standards in Order No. 497.

317. On the issue of guidance, the Commission will not impose a blanket provision stating that guidance issued by the Commission with respect to previous Standards has no precedential effect. Many of the Standards have been carried forward into the new regulations, and others are similar. The determination of whether previous statements and rulings made by the Commission may be useful in providing guidance as to the new Standards must be made on a case-by-case basis, and is very dependent on which provision of the Standards is in question.

318. E.ON's related concern about public meetings, to the extent it does not entail matters relating to the Independent Functioning Rule and the No Conduit Rule, is beyond the scope of this Final Rule. To the extent E.ON's concern does involve those provisions, it may look for guidance to the discussions in this Final Rule regarding them, as well as to the regulatory text.

IV. Information Collection Statement

319. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[345]

320. Previously, the Commission submitted to OMB the information collection requirements arising from the Standards of Compliance adopted in Order No. 2004. OMB approved those requirements.[346] The revisions to the Standards proposed in this issuance are modifications of already approved information collection procedures, and do not impose any significant additional information collection burden on industry participants. Many of the changes consist merely of the rewording of definitions and the reordering of the various information collection requirements. Some information collection requirements have been deleted, such as the posting of organizational charts. A requirement has been added concerning the maintenance of records regarding certain informational exchanges between transmission function employees and marketing function employees, as well as a requirement regarding the posting of contact information regarding the identification of the Chief Compliance Officer. Neither of these should impose a significant burden on the transmission providers. In fact, by proposing that the Standards will no longer govern the relationship between transmission providers and their Energy Affiliates, the overall information collection burden will likely decrease.

321. The Commission is submitting notification of the information collection requirements imposed in this Final Rule to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.[347] Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods of minimizing respondent's burden, including the use of automated information techniques.

322. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–592 and 717.

Action: Proposed Collection.

OMB Control No.: 1902–0157–1902–173.

Respondents: Business or other for profit.

Frequency of Responses: On occasion.

Necessity of the Information: The information is necessary to ensure that all regulated transmission providers treat all transmission customers on a non-discriminatory basis.

Internal review: The Commission has reviewed the requirements pertaining to natural gas pipelines and transmitting electric utilities and determined the proposed revisions are necessary to clarify the Standards, enhance compliance, increase efficiencies, and conform with a recent court decision.

323. These requirements conform to the Commission's plan for efficient information collection, communication, and management with the natural gas and electric utility industries. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

324. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer], phone: (202) 502–8415, fax: (202) 208–2425, e-mail: *Michael.Miller@FERC.gov.* Comments on the requirements of the Final Rule also may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention Desk Officer for the Federal Energy Regulatory Commission).

V. Environmental Analysis

325. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[348] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under § 380.4 of the Commission's regulations for certain actions. The actions proposed here fall within the categorical exclusions because this rule is clarifying and corrective, does not substantially change the effect of the regulations being amended and calls for information gathering and dissemination.[349] Therefore, an environmental assessment is unnecessary and has not been prepared for this rulemaking.

VI. Regulatory Flexibility Act

326. The Regulatory Flexibility Act of 1980 (RFA)[350] generally requires a description and analysis of Final Rules that will have significant economic impact on a substantial number of small entities. Because most transmission providers do not fall within the definition of ''small entity,''[351] the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Furthermore, small entities may seek a waiver of these requirements, and those small entities that have already received a waiver of the Standards would be unaffected by the requirements of this proposed rulemaking.

VII. Document Availability

327. 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*)

[344] *See* 18 CFR1b.21 (2008).

[345] 5 CFR 1320.11.

[346] Letter from OMB to the Commission (Jan. 20, 2004) (OMB Control Number 1902–0157); ''Notice of Action'' letter from OMB to the Commission (Jan. 20, 2004) (OMB Control Number 1902–0173).

[347] 44 U.S.C. 3507(d) (2000 and Supp. V 2005).

[348] Order No. 486, *Regulations Implementing the National Environmental Policy Act of 1969*, FERC Stats. & Regs. ¶ 30,783 (1987).

[349] 18 CFR 380.4(a)(2)(ii) and 380.4(a)(5) (2008).

[350] 5 U.S.C. 601–612 (2000 and Supp. V 2005).

[351] *See* 5 U.S.C. 601(3) and (6) (2000 and Supp. V 2005).

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

328. 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.

329. 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*.

VIII. Effective Date and Congressional Notification

330. These regulations are effective 30 days from the date of publication in the **Federal Register**. Transmission providers must be in full compliance with them by that date, with the exception of the posting and training requirements, with which transmission providers must be in full compliance no later than 60 days from the date of publication in the **Federal Register**.

331. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 358

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ In consideration of the foregoing, the Commission revises part 358, Chapter I, Title 18, *Code of Federal Regulations,* to read as follows:

■ 1. Part 358 is revised to read as follows:

PART 358—STANDARDS OF CONDUCT

Sec.
358.1 Applicability.
358.2 General principles.
358.3 Definitions.
358.4 Non-discrimination requirements.
358.5 Independent functioning rule.
358.6 No conduit rule.
358.7 Transparency rule.
358.8 Implementation requirements.

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subparts B or G of part 284 of this chapter and conducts transmission transactions with an affiliate that engages in marketing functions.

(b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and conducts transmission transactions with an affiliate that engages in marketing functions.

(c) This part does not apply to a public utility transmission provider that is a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). If a public utility transmission owner participates in a Commission-approved ISO or RTO and does not operate or control its transmission system and has no access to transmission function information, it may request a waiver from this part.

(d) A transmission provider may file a request for a waiver from all or some of the requirements of this part for good cause.

§ 358.2 General principles.

(a) A transmission provider must treat all transmission customers, affiliated and non-affiliated, on a not unduly discriminatory basis, and must not make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage with respect to any transportation of natural gas or transmission of electric energy in interstate commerce, or with respect to the wholesale sale of natural gas or of electric energy in interstate commerce.

(b) A transmission provider's transmission function employees must function independently from its marketing function employees, except as permitted in this part or otherwise permitted by Commission order.

(c) A transmission provider and its employees, contractors, consultants and agents are prohibited from disclosing, or using a conduit to disclose, non-public transmission function information to the transmission provider's marketing function employees.

(d) A transmission provider must provide equal access to non-public transmission function information to all its transmission function customers, affiliated and non-affiliated, except in the case of confidential customer information or Critical Energy Infrastructure Information.

§ 358.3 Definitions.

(a) *Affiliate* of a specified entity means:

(1) Another person that controls, is controlled by or is under common control with, the specified entity. An affiliate includes a division of the specified entity that operates as a functional unit.

(2) For any exempt wholesale generator (as defined under § 366.1 of this chapter), affiliate shall have the meaning set forth in § 366.1 of this chapter, or any successor provision.

(3) ''Control'' as used in this definition means the direct or indirect authority, whether acting alone or in conjunction with others, to direct or cause to direct the management policies of an entity. A voting interest of 10 percent or more creates a rebuttable presumption of control.

(b) *Internet Web site* refers to the Internet location where an interstate natural gas pipeline or a public utility posts the information, by electronic means, required under this part 358.

(c) *Marketing functions means:*

(1) in the case of public utilities and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales of electric energy made by providers of last resort (POLRs) acting in their POLR capacity; and

(2) in the case of interstate pipelines and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, natural gas, subject to the following exclusions:

(i) Bundled retail sales,

(ii) Incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities,

(iii) Sales of natural gas solely from a seller's own production,

(iv) Sales of natural gas solely from a seller's own gathering or processing facilities, and

(v) Sales by an intrastate natural gas pipeline, by a Hinshaw interstate pipeline exempt from the Natural Gas Act, or by a local distribution company making an on-system sale.

(d) *Marketing function employee* means an employee, contractor,

consultant or agent of a transmission provider or of an affiliate of a transmission provider who actively and personally engages on a day-to-day basis in marketing functions.

(e) *Open Access Same Time Information System* or *OASIS* refers to the Internet location where a public utility posts the information required by part 37 of this chapter, and where it may also post the information required to be posted on its Internet Web site by this part 358.

(f) *Transmission* means electric transmission, network or point-to-point service, ancillary services or other methods of electric transmission, or the interconnection with jurisdictional transmission facilities, under part 35 of this chapter; and natural gas transportation, storage, exchange, backhaul, or displacement service provided pursuant to subparts B or G of part 284 of this chapter.

(g) *Transmission customer* means any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending requests for transmission service or for information regarding transmission.

(h) *Transmission functions* means the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests.

(i) *Transmission function employee* means an employee, contractor, consultant or agent of a transmission provider who actively and personally engages on a day-to-day basis in transmission functions.

(j) *Transmission function information* means information relating to transmission functions.

(k) *Transmission provider* means:

(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or

(2) Any interstate natural gas pipeline that transports gas for others pursuant to subparts B or G of part 284 of this chapter.

(3) A transmission provider does not include a natural gas storage provider authorized to charge market-based rates.

(l) *Transmission service* means the provision of any transmission as defined in § 358.3(f).

(m) *Waiver* means the determination by a transmission provider, if authorized by its tariff, to waive any provisions of its tariff for a given entity.

§ 358.4 Non-discrimination requirements.

(a) A transmission provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if the tariff provisions do not permit the use of discretion.

(b) A transmission provider must apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a not unduly discriminatory manner, if the tariff provisions permit the use of discretion.

(c) A transmission provider may not, through its tariffs or otherwise, give undue preference to any person in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

(d) A transmission provider must process all similar requests for transmission in the same manner and within the same period of time.

§ 358.5 Independent functioning rule.

(a) *General rule.* Except as permitted in this part or otherwise permitted by Commission order, a transmission provider's transmission function employees must function independently of its marketing function employees.

(b) *Separation of functions.* (1) A transmission provider is prohibited from permitting its marketing function employees to:

(i) Conduct transmission functions; or

(ii) Have access to the system control center or similar facilities used for transmission operations that differs in any way from the access available to other transmission customers.

(2) A transmission provider is prohibited from permitting its transmission function employees to conduct marketing functions.

§ 358.6 No conduit rule.

(a) A transmission provider is prohibited from using anyone as a conduit for the disclosure of non-public transmission function information to its marketing function employees.

(b) An employee, contractor, consultant or agent of a transmission provider, and an employee, contractor, consultant or agent of an affiliate of a transmission provider that is engaged in marketing functions, is prohibited from disclosing non-public transmission function information to any of the transmission provider's marketing function employees.

§ 358.7 Transparency rule.

(a) *Contemporaneous disclosure.* (1) If a transmission provider discloses non-public transmission function information, other than information identified in paragraph (a)(2) of this section, in a manner contrary to the requirements of § 358.6, the transmission provider must immediately post the information that was disclosed on its Internet Web site.

(2) If a transmission provider discloses, in a manner contrary to the requirements of § 358.6, non-public transmission customer information, critical energy infrastructure information (CEII) as defined in § 388.113(c)(1) of this chapter or any successor provision, or any other information that the Commission by law has determined is to be subject to limited dissemination, the transmission provider must immediately post notice on its Web site that the information was disclosed.

(b) *Exclusion for specific transaction information.* A transmission provider's transmission function employee may discuss with its marketing function employee a specific request for transmission service submitted by the marketing function employee. The transmission provider is not required to contemporaneously disclose information otherwise covered by § 358.6 if the information relates solely to a marketing function employee's specific request for transmission service.

(c) *Voluntary consent provision.* A transmission customer may voluntarily consent, in writing, to allow the transmission provider to disclose the transmission customer's non-public information to the transmission provider's marketing function employees. If the transmission customer authorizes the transmission provider to disclose its information to marketing function employees, the transmission provider must post notice on its Internet Web site of that consent along with a statement that it did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent.

(d) *Posting written procedures on the public Internet.* A transmission provider must post on its Internet Web site current written procedures implementing the standards of conduct.

(e) *Identification of affiliate information on the public Internet.* (1) A transmission provider must post on its Internet Web site the names and addresses of all its affiliates that employ or retain marketing function employees.

(2) A transmission provider must post on its Internet Web site a complete list of the employee-staffed facilities shared by any of the transmission provider's transmission function employees and marketing function employees. The list must include the types of facilities

shared and the addresses of the facilities.

(3) The transmission provider must post information concerning potential merger partners as affiliates that may employ or retain marketing function employees, within seven days after the potential merger is announced.

(f) *Identification of employee information on the public Internet.* (1) A transmission provider must post on its Internet Web site the job titles and job descriptions of its transmission function employees.

(2) A transmission provider must post a notice on its Internet Web site of any transfer of a transmission function employee to a position as a marketing function employee, or any transfer of a marketing function employee to a position as a transmission function employee. The information posted under this section must remain on its Internet Web site for 90 days. No such job transfer may be used as a means to circumvent any provision of this part. The information to be posted must include:

(i) The name of the transferring employee,

(ii) The respective titles held while performing each function (*i.e.,* as a transmission function employee and as a marketing function employee), and

(iii) The effective date of the transfer.

(g) *Timing and general requirements of postings on the public Internet.* (1) A transmission provider must update on its Internet Web site the information required by this part 358 within seven business days of any change, and post the date on which the information was updated. A public utility may also post the information required to be posted under part 358 on its OASIS, but is not required to do so.

(2) In the event an emergency, such as an earthquake, flood, fire or hurricane, severely disrupts a transmission provider's normal business operations, the posting requirements in this part may be suspended by the transmission provider. If the disruption lasts longer than one month, the transmission provider must so notify the Commission and may seek a further exemption from the posting requirements.

(3) All Internet Web site postings required by this part must be sufficiently prominent as to be readily accessible.

(h) *Exclusion for and recordation of certain information exchanges.* (1) Notwithstanding the requirements of §§ 358.5(a) and 358.6, a transmission provider's transmission function employees and marketing function employees may exchange certain non-public transmission function information, as delineated in § 358.7(h)(2), in which case the transmission provider must make and retain a contemporaneous record of all such exchanges except in emergency circumstances, in which case a record must be made of the exchange as soon as practicable after the fact. The transmission provider shall make the record available to the Commission upon request. The record may consist of hand-written or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like, and must be retained for a period of five years.

(2) The non-public information subject to the exclusion in § 358.7(h)(1) is as follows:

(i) Information pertaining to compliance with Reliability Standards approved by the Commission, and

(ii) Information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units.

(i) *Posting of waivers.* A transmission provider must post on its Internet Web site notice of each waiver of a tariff provision that it grants in favor of an affiliate, unless such waiver has been approved by the Commission. The posting must be made within one business day of the act of a waiver. The transmission provider must also maintain a log of the acts of waiver, and must make it available to the Commission upon request. The records must be kept for a period of five years from the date of each act of waiver.

§ 358.8 Implementation requirements.

(a) *Effective date.* A transmission provider must be in full compliance with the standards of conduct on the date it commences transmission transactions with an affiliate that engages in marketing functions.

(b) *Compliance measures and written procedures.* (1) A transmission provider must implement measures to ensure that the requirements of §§ 358.5 and 358.6 are observed by its employees and by the employees of its affiliates.

(2) A transmission provider must distribute the written procedures referred to in § 358.7(d) to all its transmission function employees, marketing function employees, officers, directors, supervisory employees, and any other employees likely to become privy to transmission function information.

(c) *Training and compliance personnel.* (1) A transmission provider must provide annual training on the standards of conduct to all the employees listed in paragraph (b)(2) of this section. The transmission provider must provide training on the standards of conduct to new employees in the categories listed in paragraph (b)(2) of this section, within the first 30 days of their employment. The transmission provider must require each employee who has taken the training to certify electronically or in writing that s/he has completed the training.

(2) A transmission provider must designate a chief compliance officer who will be responsible for standards of conduct compliance. The transmission provider must post the name of the chief compliance officer and provide his or her contact information on its Internet Web site.

(d) *Books and records.* A transmission provider must maintain its books of account and records (as prescribed under parts 101, 125, 201 and 225 of this chapter) separately from those of its affiliates that employ or retain marketing function employees, and these must be available for Commission inspections.

Note: The following appendix will not be published in the *Code of Federal Regulations.*

Appendix A

Table of Commenters and Abbreviations for Commenters.

Commenter	Abbreviation
Alcoa Inc	ALCOA.
Ameren Services Company	Ameren.
American Gas Association	AGA.
American Public Gas Association	APGA.
American Public Power Association	APPA.
American Transmission Company LLC	ATC.
Arizona Public Service Company	Arizona PSC.
Bonneville Power Administration	Bonneville.
California Public Utilities Commission	California PUC.

Commenter	Abbreviation
Calypso U.S. Pipeline, LLC and Calypso LNG, LLC	Calypso.
CenterPoint Energy Gas Transmission Company	CenterPoint.
Chandeleur Pipeline Company and Sabine Pipeline Lince LLC	Chandeleur.
DCP Midstream, LLC	DCP Midstream.
Destin Pipeline Company, L.L.C	Destin.
Dominion Resources, Inc	Dominion Resources.
Duke Energy Corporation	Duke.
E.ON U.S. LLC	E.ON.
Edison Electric Institute	EEI.
El Paso Corporation	El Paso.
Electric Power Supply Association	EPSA.
Entergy Services Inc	Entergy.
Federal Trade Commission	FTC.
FirstEnergy Service Company	FirstEnergy.
Hampshire Gas Company and Washington Gas Light Company	Hampshire.
Idaho Power Company	Idaho Power.
International Transmission Company	ITC.
Interstate Natural Gas Association of America	INGAA.
Iroquois Gas Transmission System, L.P	Iroquois.
Kinder Morgan Interstate Pipelines	Kinder Morgan.
Large Public Power Council	LPPC.
MidAmerican Energy Electric Utilities	MidAmerican.
National Association of Regulatory Utility Commissioners	NARUC.
National Grid USA	National Grid.
Natural Gas Supply Association	NGSA.
New York Public Service Commission	New York PSC.
NiSource, Inc	NiSource.
Northern California Power Agency	NCPA.
Northwest Natural Gas Company and KB Pipeline Company	Northwest Natural.
Pacific Gas and Electric Company	PG&E.
PSEG Companies	PSEG.
Public Utilities Commission of Ohio	PUC of Ohio.
Puget Sound Energy, Inc. and Avista Corporation	Puget Sound.
Questar Gas Company	Questar.
Sacramento Municipal Utility District	SMUD.
Salt River Project Agricultural Improvement and Power District	Salt River.
SCANA Corporation	SCANA.
Southern California Edison Company	SCE.
Southern Company Services, Inc	Southern Co. Services.
Southwest Gas Corporation	Southwest Gas.
Spectra Energy Transmission, LLC and Spectra Energy Partners, LP	Spectra.
Transmission Access Policy Study Group	TAPS.
Transmission Agency of Northern California	TANC.
Transmission Dependent Utility Systems	TDU Systems.
U.S. Department of the Interior	US DOI.
Unitil Corporation	Unitil.
USG Pipeline Company, et al	USG.
Vectren Corporation	Vectren.
Washington Utilities and Transportation Commission	WA UTC.
Western Utilities	Western Utilities.
Williston Basin Interstate Pipeline Company	Williston.
Wisconsin Electric Power Company	Wisconsin Electric.
Xcel Energy Services Inc	Xcel.

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Part IV

Department of Housing and Urban Development

24 CFR Part 5

Pet Ownership for the Elderly and Persons With Disabilities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–5127–F–02]

RIN 2501–AD31

Pet Ownership for the Elderly and Persons With Disabilities

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the requirements for pet ownership in HUD-assisted public housing and multifamily housing projects for the elderly and persons with disabilities. Specifically, this final rule conforms these pet ownership requirements to the requirements for animals assisting persons with disabilities in HUD's public housing programs, other than housing projects for the elderly or persons with disabilities. This final rule follows publication of an October 15, 2007, proposed rule, and takes into consideration the public comments received on the proposed rule. In response to one comment, HUD has made a nonsubstantive change to the proposed rule. Specifically, consistent with the phrasing used in HUD's public housing pet ownership regulations, this final rule amends the assisted housing regulations to refer to ''animals that assist, support, or provide service to persons with disabilities.''

DATES: *Effective Date:* November 26, 2008.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–2000; telephone number 202–619–8046 (this is not a toll-free number). Hearing- or speech-impaired persons may contact this number by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On October 15, 2007, at 72 FR 58448, HUD published for public comment a proposed rule to revise HUD's regulations that apply to pet ownership in HUD-assisted housing for the elderly and persons with disabilities.

Certain animals provide assistance or perform tasks for the benefit of a person with a disability. Such animals, often referred to as ''assistance animals,'' ''service animals,'' ''support animals,'' or ''therapy animals,'' provide disability related functions including, but not limited to, guiding visually impaired individuals, alerting hearing-impaired persons to sounds and noises, providing protection or rescue assistance, pulling a wheelchair, seeking and retrieving items, alerting individuals to impending seizures, and providing emotional support to persons who have a disability related need for such support.

The pet ownership requirements applicable to public housing and multifamily housing projects for the elderly or persons with disabilities are codified at 24 CFR part 5, subpart C (''Pet Ownership for the Elderly or Persons With Disabilities''). Conversely, pet ownership by residents in public housing, except housing projects for the elderly or persons with disabilities and not including housing assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f *et seq.*), is addressed at 24 CFR part 960, subpart G (''Pet Ownership in Public Housing'').

The regulations codified at 24 CFR parts 5 and 960 contain minor differences in how they describe animals that assist persons with disabilities that qualify for exclusion from pet ownership rules. In 24 CFR 5.303, entitled, ''Exclusion for animals that assist persons with disabilities,'' project owners and public housing agencies (PHAs) may not apply or enforce any pet rules developed under part 5 against individuals with animals that are used to assist persons with disabilities. Part 5, however, provides that owners or PHAs may require assistance animals to qualify for the exclusion. Project owners must grant this exclusion if: (1) The tenant or prospective tenant certifies, in writing, that the tenant or a member of his or her family is a person with a disability; (2) the animal has been trained to assist persons with that specific disability; and (3) the animal actually assists the person with a disability.

In contrast, 24 CFR 960.705, entitled ''Animals that assist, support, or provide service to persons with disabilities,'' states that PHAs may not apply or enforce pet policies established under 24 CFR part 960 against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities. This exclusion applies to animals that reside in public housing, other than housing developments for the elderly or persons with disabilities, and to such animals that visit these developments. The provisions in part 960 do not contain the tenant certification or the animal training requirements found in § 5.303. PHAs, however, are authorized to verify that the animal qualifies as a reasonable accommodation under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) and the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3631)). An animal qualifies as a reasonable accommodation if: (1) An individual has a disability, as defined in the Fair Housing Act or Section 504, (2) the animal is needed to assist with the disability, and (3) the individual who requests the reasonable accommodation demonstrates that there is a relationship between the disability and the assistance that the animal provides.

Although the differences between the exclusions contained in HUD's two pet ownership regulations are minor, the differing requirements have sometimes been a source of confusion to housing providers and program participants. The October 15, 2007, proposed rule addressed this issue by proposing to revise the pet ownership regulations in 24 CFR part 5, subpart C to comport with 24 CFR part 960, subpart G. The proposed regulatory amendments were designed to reduce confusion and make it clear that the same exclusions for animals that assist persons with disabilities apply to the pet ownership requirements for all of HUD's public and assisted housing programs. The amendments do not change existing HUD policy, which applies Fair Housing Act and Section 504 reasonable accommodation principles. Interested readers should refer to the preamble of the October 15, 2007, proposed rule for details regarding the proposed regulatory amendments to 24 CFR part 5.

II. This Final Rule; Change Made to the October 15, 2007, Proposed Rule

This final rule follows publication of the October 15, 2007, proposed rule and takes into consideration the public comments received on the proposed rule. The public comment period on the proposed rule closed on December 14, 2007, and HUD received 28 public comments. Comments were received from PHAs, operators of HUD-assisted housing for the elderly and persons with disabilities, a state human rights commission, nonprofit and trade organizations engaged in affordable housing and community development programs, and other interested parties and stakeholders.

After careful consideration of the issues raised by the commenters, HUD has made one change at the suggestion of public comment. Specifically, HUD has taken the opportunity afforded by this final rule to conform the phrasing used in 24 CFR part 5, subpart C, to

qualify assistance animals to the phrasing used in 24 CFR part 960, subpart G. This change does not alter the substance of the part 5 requirements, but is designed to bring greater uniformity and clarity to HUD's pet ownership regulations.

III. Discussion of the Public Comments on the October 15, 2007, Proposed Rule

This summary of comments presents the major issues and concerns raised by the public commenters on the October 15, 2007, proposed rule, and HUD's responses to those issues.

Comment: Every elderly person should be allowed a pet. One commenter expressed the view that every elderly person should be allowed to have a pet, without restriction or certification.

HUD Response. The Department's existing regulations that apply to pet ownership in HUD-assisted housing for the elderly and persons with disabilities in 24 CFR 5.315 already provide that residents may keep common household pets in accordance with the prescribed mandatory and discretionary pet rules in §§ 5.350 and 5.318. The prescribed pet rules place reasonable limitations on pet ownership to ensure the health, safety, and well-being of all residents. The pet ownership conditions in 24 CFR 960.707 for public housing excluding housing for the elderly or persons with disabilities contain a similar provision permitting common household pets, subject to the reasonable requirements of the PHA.

Comment: The proposed definition of service animal is too broad, and, therefore, ripe for abuse. Several commenters wrote that the proposed revision to the definition of ''service animal'' in § 5.303 would potentially include all animals as assistive or supportive, without regard to whether the animal had been trained to assist persons with a specific disability. The commenters wrote that, to date, the term ''service animal'' has had a narrow definition relating to animals with specialized training to assist persons with disabilities for specific purposes. The commenters wrote that the proposed change would create an ambiguity regarding what animals are permitted to reside in HUD-assisted housing. The commenters suggest that the alleged vagueness of the language will force property owners to make subjective decisions that may, in turn, lead to increased litigation, resulting in significant economic burden, especially for smaller PHAs. The commenters objected that the proposed rule would deter property managers from establishing policies to ensure that animals brought into the property are needed as a reasonable accommodation, and would create a situation in which a tenant can allege a right to keep any pet as a service animal.

HUD Response. The Department does not agree that the revision broadens the scope of service animals in housing. The Department does not believe the final rule will create either ambiguity regarding which animals are permitted or lead to a situation in which a tenant can allege a right to keep any pet as a service animal. The Department's regulations do not provide a specific definition of the term ''service animal.'' The use of assistive animals, also referred to as ''service animals,'' ''support animals,'' ''assistance animals,'' or ''therapy animals,'' is governed by reasonable accommodation law. The Department's revision is not altering existing law on reasonable accommodation. Rather, by amending the language of the part 5 exclusion to correspond to § 960.705, the Department is conforming the part 5 regulation to statutory authority and to a longstanding HUD position on reasonable accommodation. Under both the Fair Housing Act and Section 504, in order for a requested accommodation to qualify as a reasonable accommodation, the requester must have a disability, and the accommodation must be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the person's disability. Thus, in the case of assistance/service animals, an individual with a disability must demonstrate a nexus between his or her disability and the function the service animal provides. The Department's position has been that animals necessary as a reasonable accommodation do not necessarily need to have specialized training. Some animals perform tasks that require training, and others provide assistance that does not require training. This position is also articulated in the Public Housing Occupancy Guidebook and the Multifamily Occupancy Handbook.

Housing providers are entitled to verify the existence of the disability, and the need for the accommodation—if either is not readily apparent. Accordingly, persons who are seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability.

In addition, housing providers are not required to provide any reasonable accommodation that would pose a direct threat to the health or safety of others. Thus, if the particular animal requested by the individual with a disability has a history of dangerous behavior, the housing provider does not have to accept the animal into the housing. Moreover, a housing provider is not required to make a reasonable accommodation if the presence of the assistance animal would (1) result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation; (2) pose an undue financial and administrative burden; or (3) fundamentally alter the nature of the provider's operations.

For an extensive discussion of reasonable accommodation principles, see the ''Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act'' (HUD/DOJ Joint Statement), available at: *http://www.hud.gov/offices/fheo/disabilities/index.cfm.*

Comment: The proposed elimination of the animal training requirement may result in further confusion and lead to abuse. Several commenters, raising concerns similar to those raised by the comments on the definition of a service animal, objected to the elimination of the training and certification requirements. The commenters wrote that the proposed rule would open the door to abuse by allowing a tenant to obtain an animal without any verification of need. To expand the definition of animals exempt from the pet rules, while at the same time prohibiting property managers from confirming the need for the animal, might lead to litigation and other costly expenditures. The commenters wrote that the operative effect of the proposed amendment would be to exclude from any regulation at all, under either part 5 or part 960, not only animals that meet the traditional criteria for assistive or service animals, but also animals that have come to be known as ''comfort pets.''

HUD Response. The Department believes removing the animal training and certification requirements and conforming the language of the part 5 exclusion to § 960.705 will actually result in less confusion by improving uniformity in its regulations and by

conforming the regulations to HUD policy and existing case law. The Department does not believe that the elimination of the training requirement will in effect exclude all animals from the regulatory requirements. Under amended § 5.303, the animal must be ''necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities'' in order to qualify under the exclusion from pet ownership policies. Persons with disabilities who cannot establish that they need the animal as a reasonable accommodation are not covered by the exclusion, and, therefore, must comply with the housing provider's pet rules if they wish to keep the animal.

Both the Fair Housing Act and Section 504 require that in order to qualify as a reasonable accommodation, the requester must have a disability, and there must be a relationship between the requested accommodation and that person's disability. For example, the person with a disability who is requesting the assistance animal must demonstrate a disability-related need for the animal, such as service, or assistance, performing tasks for the benefit of a person with a disability, or providing emotional support that alleviates one or more identified symptoms or effects of a person's disability. Examples of disability-related functions, include, but are not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.

Finally, the Department believes that removing the animal training requirement ensures equal treatment of persons with disabilities who need animals in housing as a reasonable accommodation, for a wide variety of purposes. While many animals are trained to perform certain tasks for persons with disabilities, others do not need training to provide the needed assistance. For example, there are animals that have an innate ability to detect that a person with a seizure disorder is about to have a seizure and can let the individual know ahead of time so that the person can prepare. This ability is not the result of training, and a person with a seizure disorder might need such an animal as a reasonable accommodation to his/her disability. Moreover, emotional support animals do not need training to ameliorate the effects of a person's mental and emotional disabilities. Emotional support animals by their very nature, and without training, may relieve depression and anxiety, and/or help reduce stress-induced pain in persons with certain medical conditions affected by stress.

Comment: Proposed elimination of training component is inconsistent with the regulations implementing the Americans with Disabilities Act. Several commenters wrote that the applicable definition of the term ''service animal'' is contained in the Department of Justice regulations implementing the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 *et seq.*). The commenters wrote that HUD regulations have never specifically defined the term ''service animal.'' Under the ADA regulations at 28 CFR 36.104, a service animal is defined as an animal ''individually trained'' to do work or perform tasks for the benefit of an individual with a disability. The commenters wrote that this definition covers both ADA claims and claims under Section 504, which HUD is responsible for enforcing. Also according to the commenters, by eliminating the training requirement, the proposed rule contradicts the ADA definition.

HUD Response. The Department does not agree that the definition of the term ''service animal'' contained in the Department of Justice regulations implementing the ADA should be applied to the Fair Housing Act and Section 504. The ADA governs the use of animals by persons with disabilities primarily in the public arena. There are many areas where the ADA and the Fair Housing Act and Section 504 contain different requirements. For example, accessibility is defined differently under the ADA than under the Fair Housing Act and Section 504.

The Fair Housing Act and HUD's Section 504 regulations govern the use of animals needed as a reasonable accommodation in housing. HUD's regulations and policies pertaining to reasonable accommodation were constructed specifically to address housing and, furthermore, were enacted prior to the development and implementation of the ADA regulations. Thus, the requirements for assistance/service animals must be evaluated in the appropriate context of housing, and are independent of the ADA regulations that were formulated to meet the needs of persons with disabilities in a different context and were adopted subsequent to HUD's regulations.

There is a valid distinction between the functions animals provide to persons with disabilities in the public arena, i.e., performing tasks enabling individuals to use public services and public accommodations, as compared to how an assistance animal might be used in the home. For example, emotional support animals provide very private functions for persons with mental and emotional disabilities. Specifically, emotional support animals by their very nature, and without training, may relieve depression and anxiety, and help reduce stress-induced pain in persons with certain medical conditions affected by stress. Conversely, persons with disabilities who use emotional support animals may not need to take them into public spaces covered by the ADA.

Comment: The regulations should clarify that reasonable rules may be established to address health and safety concerns. Several commenters wrote that the proposed regulatory changes might create an unsafe living environment. These commenters wrote that the proposed rule has the potential to increase the number and types of animals living in assisted housing. The commenters suggested that the regulatory language be revised to clarify that project owners are permitted to establish reasonable rules to address legitimate concerns for the safe and sanitary management of all animals who live on the premises. These basic requirements include ensuring that animals are properly inoculated; meet minimal sanitary standards; are properly restrained; and are identified and registered with the project owner. The commenters wrote that the rights of all tenants deserve respect, and that reasonable regulations to ensure health, safety, and quiet enjoyment should maintain that respect without denying residents the right to have animals.

HUD Response. The rule will not interfere with the ability of housing providers to address health and safety concerns that arise with respect to assistance animals. The final rule at § 5.303(b)(3) states that nothing in subpart C ''affects any authority that project owners or PHAs may have to regulate animals that assist, support, or provide service to persons with disabilities, under federal, state, or local law.'' Project owners and PHAs thus continue to retain their authority to regulate animals that are exempt from the pet ownership requirements in accordance with federal, state, or local law.

In addition, a person with a disability who uses an assistance animal is responsible for the animal's care and maintenance. For example, a housing provider may establish reasonable rules in lease provisions requiring a person

with a disability to pick up and dispose of his or her assistance animal's waste.

The existing law on reasonable accommodation also addresses health and safety concerns. Under the Fair Housing Act, a housing provider need not make a dwelling available to any person whose tenancy constitutes a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Consistent with that provision of the Fair Housing Act, a housing provider may exclude an assistance animal from a housing complex when that animal's behavior poses a direct threat and its owner takes no effective action to control the animal's behavior so that the threat is mitigated or eliminated.

The determination of whether an assistance animal poses a direct threat must rely on an individualized assessment that is based on objective evidence about the specific animal in question, such as the animal's current conduct or a recent history of overt acts. The assessment must consider the nature, duration, and severity of the risk of injury; the probability that the potential injury will actually occur; and whether reasonable modifications of rules, policies, practices, procedures, or services will reduce the risk. In evaluating a recent history of overt acts, a provider must take into account whether the assistance animal's owner has taken any action that has reduced or eliminated the risk. Examples would include obtaining specific training, medication, or equipment for the animal.

This direct threat provision of the Fair Housing Act requires the existence of a significant risk—not a remote or speculative risk. Accordingly, the determination cannot be the result of fear or speculation about the types of harm or damage an animal may cause, or evidence about harm or damage caused by other animals (See HUD/DOJ Joint Statement).

Comment: Need for further guidance. Two commenters wrote that the issuance of formal legal guidance on the general requirement to provide reasonable accommodation to allow ''animals that assist, support, or provide service to persons with disabilities'' would be of great assistance to all concerned in the field. Such guidance would provide an invaluable sequel to the HUD/DOJ Joint Statement.

HUD Response. The Department appreciates the commenters' interest in obtaining additional legal guidance. The HUD/DOJ Joint Statement and HUD's policy manuals and handbooks, including the Public Housing Occupancy Guidebook and the Multifamily Occupancy Handbook, currently provide applicable guidance on reasonable accommodation law. This rule does not alter existing law, which under both the Fair Housing Act and Section 504 requires that in order to qualify as a reasonable accommodation: (1) The requester must have a disability, and (2) there must be a relationship between the requested accommodation and the person's disability. Once this final rule takes effect, the Department will carefully consider, in light of the revisions in § 5.303, whether there is a need to issue further guidance on reasonable accommodation.

Comment: Efforts to achieve uniformity in HUD's pet regulations should involve conforming 24 CFR part 960 to 24 CFR part 5, not the other way around. Three commenters wrote that this action would more accurately reflect the position of the Department of Justice and federal judicial decisions. In seeking internal uniformity within its own regulations, HUD may actually be creating disunity in the legal principles applicable to service animals that are to be applied across the federal government.

HUD Response. The Department does not agree that uniformity should be achieved by conforming 24 CFR part 960 to 24 CFR part 5. The HUD regulations addressing pet ownership in public housing do not include training or certification requirements and exclude from coverage of the regulation animals that ''assist, support or provide service to persons with disabilities'' (24 CFR 960.705). It is the Department's position that animals that are necessary as a reasonable accommodation do not necessarily need to be trained or meet certification requirements. This position is consistent with HUD Administrative Law Judge decisions, and with HUD handbooks and guidance used by the HUD Office of Housing and Office of Public and Indian Housing.

In addition, the Department's position is consistent with federal case law that has recognized, in cases involving emotional support animals in the housing context, that whether a particular accommodation is reasonable is a fact-intensive, case-specific determination (*Janush* v. *Charities Hous. Dev. Corp.,* 159 F. Supp. 2d 1133 (N.D. Cal. 2000); *Majors* v. *Hous. Auth. of the County of DeKalb, Ga.,* 652 F.2d 454, 457–58 (5th Cir. 1981) (remanding the case for trial on whether the plaintiff's disability required the companionship of a dog).

The Department recognizes that its regulations continue to provide guidance on service animals that differs from the Department of Justice's regulations implementing the ADA—which define service animals as ''individually trained.'' However, there are legitimate reasons why the Fair Housing Act and housing covered under Section 504 must cover emotional support animals, as well as other animals that may not need training to provide assistance to persons with other disabilities and that are not included under the ADA. In particular, assistance animals provide specific functions for persons with mental and emotional disabilities in the private setting of the home and do not require training. Generally, these animals are not needed in the public spaces covered by the ADA.

Comment: The proposed language should be revised to make it fully uniform with the language of 24 CFR 960.705. One commenter wrote that uniformity among the regulations will not be achieved until all of the phrasing used to qualify the type of animals exempt from project owners' pet rules is the same.

HUD Response. HUD agrees with the suggestion made by the commenter, and has revised the rule accordingly. HUD has taken the opportunity afforded by this final rule to conform the phrasing used in 24 CFR part 5 to qualify assistance animals to the phrasing used in the part 960 pet regulations. This change does not alter the substance of the part 5 requirements, but is designed to bring greater uniformity and clarity to HUD's pet ownership regulations. Specifically, and in accordance with the part 960 language, this final rule amends § 5.303 to consistently refer to ''animals that assist, support, or provide service to persons with disabilities.'' Section 5.303 currently refers to ''animals that assist persons with disabilities.''

Comment: HUD should assess federal best practices regarding service animals. One commenter suggested that HUD should assess federal best practices concerning service, assistance, and companion animals implemented by other federal departments.

HUD Response. The Department appreciates this comment and recognizes the value of evaluating federal best practices in order to best meet the needs of persons with disabilities. Once the final rule takes effect, the Department will consider whether further guidance is needed to ensure consistent application. At that time, the Department may elect to consider the policies of other federal departments. However, the needs of persons with disabilities in the housing arena are distinct from other settings,

such as in the public arena or in transportation. The Department must rely on its expertise specifically in the realm of HUD-assisted housing for the elderly and persons with disabilities and in public housing to best assess the rights and obligations of persons with disabilities and housing providers relating to the use of assistance animals.

IV. Findings and Certifications

Environmental Impact

This final rule involves a policy document that sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule does not change existing HUD policy, which applies Fair Housing Act and Section 504 reasonable accommodation principles. Rather, the final rule conforms the pet ownership and exclusion provisions for animals that assist persons with disabilities contained in 24 CFR part 5, subpart C, with the provisions for assistance animals and reasonable accommodation for persons with disabilities contained in 24 CFR part 960, subpart G. As discussed above in this preamble, most of the differences between the two pet ownership regulations are minor and nonsubstantive. For example, the regulations currently use different phrasing, which is being conformed in this final rule. The most substantive change being made by this final rule is the removal of the animal training and tenant certification requirements currently codified at § 5.303. To the extent this final rule has any impact on small entities, it would be to reduce the administrative and economic burdens associated with the oversight of these animal training and certification requirements.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on state, local, or tribal government or the private sector within the meaning of UMRA.

Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

■ Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 5 to read as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 2. Revise § 5.303 to read as follows:

§ 5.303 Exclusion for animals that assist, support, or provide service to persons with disabilities.

(a) This subpart C does not apply to animals that are used to assist, support, or provide service to persons with disabilities. Project owners and PHAs may not apply or enforce any policies established under this subpart against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities. This exclusion applies to animals that reside in projects for the elderly or persons with disabilities, as well as to animals that visit these projects.

(b) Nothing in this subpart C:

(1) Limits or impairs the rights of persons with disabilities;

(2) Authorizes project owners or PHAs to limit or impair the rights of persons with disabilities; or

(3) Affects any authority that project owners or PHAs may have to regulate animals that assist, support, or provide service to persons with disabilities, under federal, state, or local law.

Dated: October 10, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8–25474 Filed 10–24–08; 8:45 am]

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Prevailing Rate Systems:

Redefinition of the Buffalo, NY, and Pittsburgh, PA, Appropriated Fund Federal Wage System Wage Areas; comments due by 11-6-08; published 10-7-08 [FR E8-23725]

Recruitment and Selection through Competitive Examinations; comments due by 11-3-08; published 9-2-08 [FR E8-20272]

Recruitment, Selection, and Placement (General); comments due by 11-7-08; published 9-8-08 [FR E8-20657]

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Commission Guidance on the Use of Company Web Sites; comments due by 11-5-08; published 8-7-08 [FR E8-18148]

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Representation of Parties; Revisions to Rules; comments due by 11-7-08; published 9-8-08 [FR E8-20500]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Boeing Model 747-100, 747-100B, 747-200B, 747-200C, 747 200F, 747-300, 747SR, and 747SP Series Airplanes; comments due by 11-7-08; published 9-23-08 [FR E8-22211]

Boeing Model 747 Airplanes; comments due by 11-7-08; published 9-23-08 [FR E8-22215]

Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB 120, 120ER, 120FC, 120QC, and 120RT Airplanes; comments due by 11-6-08; published 10-7-08 [FR E8-23666]

General Electric Company (GE) CF6 80A Series Turbofan Engines; comments due by 11-3-08; published 9-4-08 [FR E8-20497]

Automatic Dependent Surveillance - Broadcast (ADS-B) Out Performance Requirements to Support Air Traffic Control (ATC) Service:

Reopening of Comment Period; comments due by 11-3-08; published 10-2-08 [FR E8-23199]

Proposed Establishment of Class E Airspace:

Napakiak, AK; comments due by 11-3-08; published 9-18-08 [FR E8-21782]

Shageluk, AK; comments due by 11-3-08; published 9-18-08 [FR E8-21780]

Proposed Revision of Class E Airspace:

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Robinson R-22/R-44 Special Training and Experience Requirements; comments due by 11-5-08; published 8-7-08 [FR E8-18239]

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Section 108 Reduction of Tax Attributes for S Corporations; comments due by 11-4-08; published 8-6-08 [FR E8-17952]

Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions; comments due by 11-5-08; published 8-7-08 [FR E8-17953]

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Alcohol and Tobacco Tax and Trade Bureau

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 11-3-08; published 9-4-08 [FR E8-20451]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 6197/P.L. 110–448

To designate the facility of the United States Postal Service located at 7095 Highway 57 in Counce, Tennessee, as the ''Pickwick Post Office Building''. (Oct. 22, 2008; 122 Stat. 5013)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–064–00001–7)	5.00	[4] Jan. 1, 2008
2	(869–064–00002–5)	8.00	Jan. 1, 2008
3 (2006 Compilation and Parts 100 and 102)	(869–064–00003–3)	35.00	[1] Jan. 1, 2008
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900–999	(869–064–00016–5)	63.00	Jan. 1, 2008
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1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
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200–699	(869–064–00115–3)	53.00	July 1, 2008
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600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

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