Federal Register

11–3–08 Monday
Vol. 73 No. 213 Nov. 3, 2008

Pages 65241–65494

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

WHEN: Tuesday, November 18, 2008
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AL37

Nonforeign Area Cost-of-Living Allowance Rates; Alaska

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is reducing the cost-of-living allowance (COLA) rates received by certain white-collar Federal and U.S. Postal Service employees in Anchorage, Fairbanks, and Juneau, Alaska. The rate reductions are the result of living-cost surveys conducted by OPM in Alaska and the Washington, DC area in 2006. Based on the survey results, OPM is reducing the COLA rates for Anchorage, Fairbanks, and Juneau from 24 percent to 23 percent. OPM is also issuing a minor clarification regarding the Alaska COLA area boundaries to make clear the 50-mile area radius is by the shortest route using paved roads.

DATES: *Effective date:* December 3, 2008. *Implementation date:* First day of the first pay period beginning on or after December 3, 2008.

FOR FURTHER INFORMATION CONTACT: J. Stanley Austin, (202) 606–2838; *fax:* (202) 606–4264; or e-mail: *COLA@opm.gov*.

SUPPLEMENTARY INFORMATION: Section 5941 of title 5, United States Code, authorizes Federal agencies to pay cost-of-living allowances (COLAs) to white-collar Federal and U.S. Postal Service employees stationed in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands (USVI). Executive Order 10000, as amended, delegates to the Office of Personnel Management the authority to administer nonforeign area COLAs and prescribes certain operational features of the program. OPM conducts living-cost surveys in each allowance area and in the Washington, DC area to determine whether, and to what degree, COLA-area living costs are higher than those in the DC area.

As required by § 591.223 of title 5, Code of Federal Regulations, OPM conducts COLA surveys in the Alaska, Pacific, and Caribbean areas on a 3-year rotating basis, and in the Washington, DC area on an annual basis. OPM sets the COLA rate for each area based on the results of these surveys. For areas not surveyed during a particular year, OPM computes interim adjustments to COLA rates based on the relative change in the Consumer Price Index (CPI) for the COLA area compared with the Washington, DC area. (See 5 CFR 591.224–226.)

OPM adopted the COLA survey methodology pursuant to the stipulation for settlement in *Caraballo et al.* v. *United States,* No. 1997–0027 (D.V.I.), August 17, 2000. *Caraballo* was a class-action lawsuit in which the plaintiffs contested the prior methodology OPM used to determine COLA rates. In the *Caraballo* settlement, the parties agreed that if the Government adopted and maintained certain changes in the COLA program, the plaintiffs would be barred from bringing suit over these issues. The stipulation for settlement is available on OPM's Web site at *http://www.opm.gov/oca/cola/settlement.asp*.

Before the settlement, the parties entered into a memorandum of understanding under which they engaged in a cooperative process to study living-cost and compensation issues. The research was exhaustive and covered essentially all aspects of the COLA program. A summary of that research is available on OPM's Web site at *http://www.opm.gov/oca/cola/research.asp*.

Exhibit A of the *Caraballo* settlement agreement lists 26 ''Safe Harbor Principles'' that outline the changes to which the parties agreed. These principles formed the basis for a new COLA methodology, which OPM incorporated into its regulations. In developing these regulations, OPM consulted with the Survey Implementation Committee, which was established under the *Caraballo* settlement and is composed of representatives of the parties in *Caraballo*. The Survey Implementation Committee in turn consulted with the Technical Advisory Committee, which was also established under the *Caraballo* settlement and comprises three economists with expertise in living-cost comparisons. OPM published proposed regulations detailing the new methodology for notice and comment in the **Federal Register** on November 9, 2001, at 66 FR 56741, and final regulations on May 3, 2002, at 67 FR 22339, to implement the new methodology. The Survey Implementation Committee and the Technical Advisory Committee worked closely with OPM in preparing for and implementing the first series of post-settlement COLA surveys.

2006 Alaska Survey

OPM conducted living-cost surveys in Anchorage, Fairbanks, Juneau, and the Washington, DC, area in the spring of 2006. On January 3, 2008, at 73 FR 774, we published the results of these surveys in the *2006 Nonforeign Area Cost-of-Living Allowance Survey Report: Alaska and Washington, DC, Areas*.

As described in the 2006 survey report, we compared the results of the COLA area surveys with the results of the DC area survey to compute a living-cost index for each of the Alaska COLA areas. Table 1 shows the final 2006 Alaska survey living-cost indexes. These indexes indicate reductions in the COLA rates for Anchorage, Fairbanks, and Juneau. OPM's regulations at 5 CFR 591.228(c) limit COLA rate reductions to 1 percentage point in a 12-month period; therefore, we are reducing the rates in Anchorage, Fairbanks, and Juneau from 24 percent to 23 percent.

TABLE 1—2006 ALASKA SURVEY INDEXES

Allowance area	Index
Anchorage	109.81
Fairbanks	118.90
Juneau	120.08
Rest of the State of Alaska	132.82

Area Boundary Clarification

We are also issuing a clarification to 5 CFR 591.207 regarding the Alaska COLA-area boundaries to make clear the 80-kilometer (50-mile) area radius is by the shortest route using paved roads when available, as measured from the

Federal courthouse to the official duty station. We believe the prior regulations should not have been interpreted differently, but issue this clarification to assist agencies when alternate interpretations are presented.

Discussion of Comments

We published a notice of proposed rulemaking regarding the planned reduction in the COLA rates for Anchorage, Fairbanks, and Juneau and the area-boundary clarification in the **Federal Register** on January 3, 2008, at 73 FR 772. We address the comments we received in response to the proposed rule in the discussion that follows.

Locality Pay

A number of commenters wrote in support of replacing the nonforeign-area COLA with locality pay. Three commenters believed OPM should not reduce Alaska COLA rates, while backing a legislative initiative to implement locality pay in the COLA areas. One commenter asked why a transition to locality pay has not already begun. Another commenter said OPM should consider the locality pay received by Federal employees in the Washington, DC, area in determining COLA rates for the nonforeign areas. Several commenters noted that, unlike the nonforeign-area COLA, locality pay is included in computations for retirement and the Thrift Savings Plan.

The Federal Employees Pay Comparability Act of 1990 (FEPCA) authorizes locality pay only for Federal employees in the contiguous 48 States and Washington, DC. We cannot consider DC-area locality pay in determining rates outside the 48 States because doing so would be equivalent to extending locality pay in these areas without authority. Additionally, we cannot credit COLAs in the retirement calculation because 5 U.S.C. 8331(3) and 8401(4) exclude allowances from base pay for Federal retirement purposes. Changes in law would be required to extend locality pay to Federal employees in the COLA areas or to include COLAs in base pay for Federal retirement purposes.

Congress is considering legislation that would replace the nonforeign-area COLA with locality pay. Because we are not able to forecast whether legislation on this issue will pass or how long the legislative process will take, we must proceed with COLA rate changes in accordance with section 5941 of title 5, U.S. Code, and the *Caraballo* settlement.

Living Costs

Most of the commenters believed the surveys did not fully consider the expenses incurred in the allowance areas. Many noted expenses in the Alaska COLA areas that they felt were either not accounted for in the surveys or that affected the accuracy of the results of the surveys. These expenses included—

—Goods and services typically found in the Washington, DC, area that are not available in the allowance areas, the cost to obtain these goods and services in the allowance areas (e.g., shipping fees), and the quality of the goods and services that are available;
—Goods and services typically purchased in the allowance areas that are not typically purchased in the Washington, DC, area;
—Variations in spending patterns between the Washington, DC, area and the allowance areas;
—Hardships encountered under adverse climate conditions;
—Climate influences on purchase of clothing, automobiles, automobile maintenance, insurance, and other goods and services;
—Housing and utility prices as affected by climate and availability;
—The frequency and cost of air travel in the allowance areas;
—The additional need for travel, lodging, and out-of-pocket expenses for quality medical care in the allowance areas; and
—Travel and other costs to send children to private schools.

As required by section 5941 of title 5, U.S. Code, we compare living costs in the COLA areas with living costs in the Washington, DC area to determine COLA rates. We measure costs using the methodology stipulated in the *Caraballo* settlement. We conduct on-site surveys in each survey area and collect more than 4,000 prices on over 300 items representing typical consumer purchases. We collect prices at over 900 outlets, including grocery, hardware, electronics, and department stores, as well as automobile dealers, doctors, dentists, insurance companies, and many other providers of goods and services. We collect these prices in both the COLA and DC areas to use in the price comparisons that determine each area's COLA rate.

The comparisons result in indexes that reflect how COLA area prices measure against DC area prices over a given period of time. These indexes do not necessarily correspond to rising (or falling) prices in the COLA areas. For instance, if living costs in a COLA area rise, but living costs in the DC area rise more sharply, the COLA rate for the area would decrease. Conversely, if COLA area living costs decrease, but DC area living costs decrease more sharply, the COLA rate for the area would increase.

In consultation with representatives of Alaska-area employee organizations and agencies on the Anchorage, Fairbanks, and Juneau COLA Advisory Committees, we select representational items to be surveyed under nine categories of expenses: Food, Shelter and Utilities, Household Furnishings and Supplies, Apparel, Transportation, Medical, Recreation, Education and Communication, and Miscellaneous. We divide these categories into subcategories and select a sufficient number of items to represent each subcategory in the living-cost surveys.

Recognizing the difficulty in surveying all employee costs in the allowance areas, the *Caraballo* settlement prescribed adjustment factors to be added to the price indexes for each COLA area. These factors reflect differences in need, availability of and access to goods and services, and quality of life in each of the COLA areas. The settlement set the adjustment factor for Anchorage at 7.0, for Fairbanks at 9.0, for Juneau at 9.0, and for the Rest of Alaska at 9.0.

We believe the COLA methodology and surveys comply fully with the *Caraballo* settlement, include ample representational items, and provide sufficient adjustment factors to account for cost differences due to climate, remoteness, and geographical and cultural diversity. We worked closely with the Survey Implementation Committee, the Technical Advisory Committee, and the survey-area COLA Advisory Committees to develop the survey procedures, items and outlets to be surveyed, and analytic techniques for the price comparisons.

Rising Prices

A number of commenters noted that certain costs have increased since we conducted the 2006 Alaska survey. They cited the cost of gasoline, housing, utilities, shipping, airline tickets, grocery items, medical needs, automobile expenses, recreational costs, various fees and taxes, and other items. Several commenters believed we should survey more frequently. We recognize that prices for various items will increase in the COLA areas and/or the DC area between surveys. We collect prices in each survey area every 3 years on a rotating basis according to a schedule agreed upon by the parties in the *Caraballo* settlement. As noted previously, we adjust area price indexes in non-survey years based on the relative change in the CPI for the COLA area compared with the CPI for the Washington, DC area. These

adjustments are designed to account for price fluctuations between surveys.

Energy Costs

Many commenters felt we should increase Alaska COLA rates to account for rising electric and heating oil costs. While DC area energy costs have also increased as a result of escalating fuel prices, we examined the effect recent Alaska energy rates would have on the area indexes. The results indicated slightly higher indexes in Alaska, but would not raise the indexes sufficiently to overcome the COLA rate reductions. The 2008 interim CPI adjustment indexes will reflect any increases in energy costs in Alaska compared to the DC area.

Several commenters noted that heating costs are higher in Alaska than the DC area because the Alaska climate is colder for longer periods of time. We discuss the energy utility model used to determine the price of utilities in section 4.2.4 of the Alaska survey report published at 73 FR 774. The utility model reflects the higher home energy costs in Alaska. As shown in Appendix 5 of the report, we determine energy utility indexes for the COLA areas based on energy usage over a 12-month period.

Geographic Coverage

One commenter said the cost of living in Girdwood, AK, which is 40 miles outside of Anchorage, is significantly higher than in Anchorage. The commenter felt the Girdwood cost of living is not adequately reflected in the Anchorage survey and that we should conduct a separate survey in Girdwood. We review outlets for surveying item prices in the Anchorage COLA area with the Anchorage COLA Advisory Committee prior to our surveys. We are open to recommendations from the Committee for surveying a selection of items in Girdwood. We cannot conduct a separate survey in Girdwood. Under 5 CFR 591.206(b), the head of a department or agency must submit a request to OPM to initiate any reconsideration of the definition of a COLA area. One of the criteria for defining a COLA area is the concentration of Federal employees in the area. OPM's Central Personnel Data File shows the Federal population in Girdwood to be small.

One commenter said the Juneau cost of living is higher than Anchorage and Fairbanks because of the lack of road access. Another commenter said Fairbanks cannot be compared to Juneau, Anchorage, or the DC area because of its colder winters. We conduct separate surveys in each allowance area and collect local prices reflecting actual costs to consumers in each area. We compare each COLA area's living costs to living costs in the DC area, as required by law. Based on this comparison, we produce a distinct index for each COLA area. The 2006 Alaska surveys indicated an index of 109.81 for Anchorage, 118.90 for Fairbanks, and 120.08 for Juneau.

One commenter noted it was more expensive to live in Anchorage than Los Angeles, San Francisco, or New York, where the locality pay rates exceed the Anchorage COLA rate. The law that authorizes the payment of COLAs in Alaska and the other nonforeign areas requires that we compare living costs in the nonforeign areas with living costs in the DC area. The Federal Employees Pay Comparability Act of 1990 does not authorize locality pay for areas outside the contiguous States and Washington, DC. Locality pay is not a cost-of-living allowance, but is based on a comparison of Federal salaries with non-Federal salaries on a locality basis.

The same commenter said we should raise the COLA rate for the Rest of the State of Alaska allowance area and return Anchorage to its former 25 percent rate based on the high cost of living in each area. Another commenter questioned why we were reducing the Juneau COLA rate when Ketchikan, which the commenter said had less expensive housing and was closer to Seattle along shipping lines, was not being reduced. The current COLA rate for the Rest of the State of Alaska, which includes Ketchikan, is 25 percent. We cannot raise this rate because 5 U.S.C. 5941 limits COLAs to no more than 25 percent of basic pay. As permitted under the *Caraballo* settlement, we do not generally survey the Rest of the State of Alaska COLA area, but determine its COLA rate using alternative indicators (*e.g.*, cost information published by the University of Alaska). In the 2006 Alaska survey, we determined the COLA index for the Rest of the State of Alaska area to be 132.82 (converting to an uncapped COLA rate of 33 percent). In the 2003 Alaska survey, we had determined the index to be 134.80 (or 35 percent). While the index has decreased since 2003, it remains above 1.25 (25 percent) and therefore continues to support the maximum 25 percent COLA rate.

The index for Anchorage declined from 112.63 in 2003 to 109.81 in 2006. The index for Juneau increased from 118.34 in 2003 to 120.08 in 2006. The index for Fairbanks increased from 115.26 in 2003 to 118.90 in 2006. Actual COLA rates are currently higher in Alaska because the *Caraballo* settlement established rates based on historical levels in the areas. The COLA rates in Alaska remain higher than indicated by OPM's surveys because we reduce rates by no more than 1 percent in a 12-month period.

Military Raises

Four commenters questioned why we were reducing civilian COLAs in Alaska when military co-workers were receiving raises. The civilian and military COLAs are governed under separate laws and are computed under different methodologies. Two major differences are that the military COLA does not use the DC area as a base for comparison and does not include housing expenses. The methodology for the civilian nonforeign area COLA derives from 5 U.S.C. 5941, Executive Order 10000, and the *Caraballo* settlement.

Impact of Reductions

The same four commenters expressed concern about the impact the COLA reductions in Anchorage, Juneau, and Fairbanks would have on employees, their families, and the Alaska economy. A number of commenters expressed similar concerns regarding recruitment and retention of employees in the Alaska COLA areas. We set COLA rates in accordance with 5 U.S.C. 5941, which authorizes COLAs based on living costs in the nonforeign areas that are substantially higher than living costs in the DC area. We cannot adjust COLA rates for other reasons, such as for recruitment and/or retention purposes. However, we attempt to minimize the impact on employees and on the local economy by reducing COLA rates by no more than 1 percentage point in a 12-month period. To address recruitment and retention problems, agencies may offer recruitment, retention, and relocation incentives and/or special salary rates. OPM's Web site at *http://www.opm.gov/oca/pay/index.asp* provides information on various pay authorities to assist with agency recruitment and retention efforts.

Price Substitutes

One commenter disagreed with the use of prices from Anchorage or Fairbanks for Juneau. As provided by the *Caraballo* settlement (under Safe Harbor Principle 11), we use prices from adjacent areas in limited circumstances when local prices for individual items are unavailable. We minimize the necessity for doing this by substituting items in the local area survey and adding the substituted items to the DC survey. However, we are not always able to locate the substituted items in the DC area. We tested the effect on the Juneau

COLA index of dropping the prices we used from Anchorage and Fairbanks and found it slightly lowered the index.

Private Education

The same commenter noted that there were no private K–12 schools in Juneau and suggested we include the cost to send a child to a residential private school outside Juneau in the private education price. We surveyed K–12 private education in the Alaska COLA areas and the DC area and computed an average tuition price that reflected all grade levels. Because a large majority of children in the Alaska survey areas attend public schools, we apply ''use factors'' to reflect the relative extent to which Federal employees make use of private education in the COLA and DC areas. We described the process used for K–12 private education in the Alaska areas in the Alaska survey report at 73 FR 777. The adjustment factor for an area covers any additional costs involved with sending children to private schools.

Catalog Pricing

The commenter also suggested we survey more items by catalog and include shipping fees. The commenter also believed we should include shipping for items that have to be returned. The commenter believed these costs to be measurable and did not feel they should be included in the adjustment factor for the area. We currently survey a select number of items in each area by catalog and include shipping in the total price of the items. We review outlets for surveying item prices with the local area COLA Advisory Committees prior to data collection. We are open to surveying more items by catalog at the recommendation of the COLA Advisory Committees. Regarding the inclusion of shipping costs for returned items, we do not believe the frequency of returns can be measured accurately, either in the allowance areas or the DC area. The *Caraballo* settlement specifically provided for the adjustment factor, which reflects ''differences in need, availability of and access to goods and services, and quality of life,'' to cover costs such as these.

Insurance

The same commenter asked if mudslide and avalanche coverage is included under the catastrophic coverage we specify for renter insurance. We use a rental equivalence approach to determine shelter costs. The rental equivalence approach compares the rental values of homes. Home insurance is a cost to the owner and therefore is implicit in these values. However, we do survey renter insurance and include the price of any special riders necessary to cover earthquake and hurricane damage. We do not specify mudslide or avalanche coverage as we have had no indications that this coverage is commonly purchased, even in Juneau. We would be open to including this coverage based on reliable data showing residents in a particular COLA area often purchase renters insurance with mudslide and/or avalanche riders.

Medical Services

A number of commenters noted that doctor, dental, and vision care are more expensive in the COLA areas. Several commenters said it was necessary to travel outside the area to obtain some medical services. These commenters felt the survey should include travel costs in these circumstances. We survey the prices of several medical services (including dental services) and items in each COLA area and in the DC area. The medical services index reflects any higher prices in the Alaska COLA areas. We do not attempt to price or quantify the availability of medical services. We consider this to be part of the adjustment factor we add to the price index to reflect differences in need, access to, and availability of goods and services, and quality of life in the COLA areas relative to the Washington, DC, area.

One commenter noted that there were no Health Maintenance Organizations (HMOs) in Anchorage. As described at 73 FR 778, OPM compared average health insurance premium costs in the COLA area with average health insurance premium costs in the DC area. Therefore, the health insurance premium index reflects higher local costs to the extent that an area has only higher cost plans available (i.e., to the extent HMOs are not available).

Automobile Costs

Several commenters said we should survey two sets of automobile tires in Alaska because snow tires are necessary during winter months. We survey both studded snow tires and all-season radial tires in Alaska to compute an average price for tires. As described at 73 FR 778, we compare this price with the average price for all-season radial tires in the DC area. We average tire prices in Alaska because each set of tires is not in use year round. We include mounting, balancing, new stems, stud fee (in Alaska), tire disposal fee, and taxes in the price for each set of tires. We consider other possible tire-related costs, such as wear and rotation frequency, to be covered by the adjustment factor for the area.

One commenter felt we should account for the need for head bolt heaters in Fairbanks. We included the cold-weather package in the price for the Chevrolet Silverado we surveyed. We include engine block heaters and other cold weather equipment or accessories to the extent they are standard additions at COLA area dealerships.

Housing Costs

Two commenters said housing prices are higher in Alaska than in the lower 48 States. Two other commenters said increased military deployments and pipeline and other non-Federal activities were reducing the available housing in Fairbanks and Anchorage and raising housing costs. As noted previously, the *Caraballo* settlement prescribed the methodology we use to conduct COLA surveys and set COLA rates. The settlement stipulates that we use a rental equivalence approach to estimate shelter costs and a hedonic regression approach to compare housing of similar quality. We worked closely with the Technical Advisory Committee economists and the Survey Implementation Committee to develop methodologies for the rental equivalence and hedonic regression processes.

We contracted for the services of a company with experience in rental data collection to survey rental properties in the Alaska and DC areas in 2006. We employed hedonic regression analysis to the rental data to compare rents in Anchorage, Fairbanks, and Juneau with rents in the Washington, DC, area. Section 5941 of title 5, U.S. Code, requires that we use the DC area as the basis for comparison; therefore, we cannot consider costs in other areas of the country.

As with other expenses, we recognize that shelter costs may increase in the COLA areas and/or the DC area between surveys. We conduct rental surveys with our price surveys in each COLA area every 3 years on a rotating basis according to the schedule agreed upon in the *Caraballo* settlement. As noted previously, we adjust area price indexes in non-survey years based on the relative change in the CPI for the COLA area compared with the CPI for the Washington, DC area. To the extent housing prices change as a result of reduced availability or for other reasons, these adjustments will account for any such price fluctuations between surveys.

One commenter asked how we applied the data element ''exceptional

view'' in the survey of rental units in Alaska, where good views are typical. Appendix 4 of the Alaska Survey Report describes the ''exceptional view'' data element as a ''view of a park, ocean, mountain, valley, golf course, etc., that is unusually beautiful for the area and may increase the rental value of the property.'' The description notes that properties with direct access to these features are not surveyed. In the 2006 survey comparisons, we used six rental properties in Alaska that were considered to have an ''exceptional view'' relative to the area.

Air Travel

Several commenters noted the high cost of air travel from the Alaska COLA areas to areas in the continental United States. The commenters requested that we consider excessive travel expenses arising from the lack of airline competition, increasing airfare rates, and area remoteness. The COLA methodology takes travel expenses into account in two ways. First, we compare the cost of air travel from the various COLA areas to common destinations in the contiguous States with the cost of air travel from the DC area to those same destinations. Second, as noted previously, we add to the overall price index for the COLA area an adjustment factor that reflects differences in need, access to and availability of goods and services, and quality of life in the COLA area relative to the DC area. This adjustment factor is designed to address considerations such as air travel that arise as a result of limited access and limited availability in the COLA areas.

Taxes

Two commenters expressed concern over high property-tax rates. Another commenter said we were reducing COLA rates at the time when taxes are increasing in Anchorage. Property taxes are an expense owners consider in setting rent; therefore, the rental equivalence methodology captures differences in property tax rates. Because of the complexity involved, we do not attempt to determine the aggregate tax liability for employees in the COLA areas and the DC area for comparison purposes. Employees in all areas have varying tax obligations depending on income, dependents, deductions, and other factors. In the DC area, employees pay a State income tax (Virginia and Maryland), city income tax (DC), local income tax (Maryland counties), personal property tax (Virginia counties), sales tax, and meals (restaurant) tax, among others. The extent to which the total tax burden may be higher in a COLA area than in the DC area is covered by the adjustment factor we add to the price index for each COLA area pursuant to the *Caraballo* settlement agreement.

Rate Preservation

Two commenters believed it to be a breach of contract for the COLA rate to be reduced from the 25 percent rate in effect when they accepted positions in Alaska. As noted previously, 5 U.S.C. 5941 requires that nonforeign area COLAs be based on differences in living costs between the allowance areas and the DC area. These differences vary over time, and we must adjust rates accordingly. We have not represented the COLAs as being non-changing, although litigation and legislation have barred reductions in the past. With the settlement of the *Caraballo* litigation, there is no longer a bar on reducing COLA rates. Because our surveys indicate that living costs in the Alaska survey areas no longer support a COLA rate of 25 percent, we must reduce the COLAs for Anchorage, Fairbanks, and Juneau in accordance with law.

Executive Order 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

Michael W. Hager,

Acting Director.

■ Accordingly, OPM amends subpart B of 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

■ 1. The authority citation for subpart B of 5 CFR part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

■ 2. In § 591.207, revise paragraphs (a), (b), and (c) to read as follows:

§ 591.207 Which areas are COLA areas?

* * * * *

(a) City of Anchorage, AK, and 80-kilometer (50-mile) radius by shortest route using paved roads when available, as measured from the Federal courthouse to the official duty station;

(b) City of Fairbanks, AK, and 80-kilometer (50-mile) radius by shortest route using paved roads when available, as measured from the Federal courthouse to the official duty station;

(c) City of Juneau, AK, and 80-kilometer (50-mile) radius by shortest route using paved roads when available, as measured from the Federal courthouse to the official duty station;

* * * * *

■ 3. Revise appendix A of subpart B to read as follows:

Appendix A to Subpart B of Part 591—Places and Rates at Which Allowances Are Paid

This appendix lists the places approved for a cost-of-living allowance and shows the authorized allowance rate for each area. The allowance rate shown is paid as a percentage of an employee's rate of basic pay. The rates are subject to change based on the results of future surveys.

Geographic coverage	Allowance rate (percent)
State of Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	23
City of Fairbanks and 80-kilometer (50-mile) radius by road	23
City of Juneau and 80-kilometer (50-mile) radius by road	23
Rest of the State	25
State of Hawaii:	
City and County of Honolulu	25
Hawaii County, Hawaii	18

Geographic coverage	Allowance rate (percent)
County of Kauai	25
County of Maui and County of Kalawao	25
Territory of Guam and Commonwealth of the Northern Mariana Islands	25
Commonwealth of Puerto Rico	13
U.S. Virgin Islands	25

[FR Doc. E8–26141 Filed 10–31–08; 8:45 am]
BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 248

[FDMS 2007–0008]

RIN 0584–AD74

WIC Farmers' Market Nutrition Program (FMNP): Nondiscretionary Provisions of Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the WIC Farmers' Market Nutrition Program (FMNP) regulations to codify three FMNP nondiscretionary provisions mandated in the Child Nutrition and WIC Reauthorization Act of 2004. The three nondiscretionary provisions include the option to authorize roadside stands, a reduction in the required amount of State matching funds, and an increase in the maximum Federal benefit level. These changes are intended to increase State agency flexibility in managing the Program. The first two provisions became effective on October 1, 2004, while the increased maximum Federal FMNP benefit level was effective as of June 30, 2004.

The provisions set forth in this rulemaking are nondiscretionary, i.e., the Department has not exercised any authority to interpret the statutory provisions beyond the language that is specifically provided in the legislation. However, the Department believes that at least one of the provisions in this rulemaking may generate additional questions or comments concerning its implementation. Therefore, the rule is being issued as an interim final rule, to afford the public the opportunity to comment on the possible implications of the provisions contained herein.

DATES: This rule will become effective on December 3, 2008.

Comment Date: To be considered, comments on this interim rule must be postmarked on or before January 2, 2009.

ADDRESSES: The Food and Nutrition Service (FNS) invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. 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 under ''How to Use This Site''. Go to ''More Search Options'' for alternative search methods, including searching by agency, viewing documents with an open comment period, or searching by document type. To make comments on this interim final rule, enter ''WIC Farmers' Market Nutrition Program (FMNP): Nondiscretionary Provisions of Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004'' or ''FDMS 2007–0008'' under ''Search documents''; click ''go'' and then use the features available on the left side of the results page to narrow your results. Under the document listing, click on ''Send a comment or submission.''
- *Mail:* Send comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746.

Comments submitted in response to this interim rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov*. Information regarding the interim rule will be available on the FNS Web site at *http://www.fns.usda.gov/wic*.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, USDA/FNS 3101 Park Center Drive, Room 529, Alexandria, VA 22302 or at (703) 305–2746 during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters

A. Executive Order 12866

This interim final rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

B. Regulatory Impact Analysis

A Regulatory Impact Analysis (RIA) was developed for this interim final rule. It follows this regulation as an Appendix. The conclusions of this analysis are summarized below.

Need for Action. The interim final rule amends the FMNP regulations to implement three nondiscretionary provisions mandated in Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004. The three provisions, which give State agencies the option to authorize roadside stands, reduce the required amount of State matching funds, and increase the maximum Federal benefit level. These provisions became effective in fiscal year 2005.

Benefits. The benefit of this interim final rule is to provide State agencies with added flexibility in operating the FMNP.

Costs. The provisions in this interim final rule are not expected to increase significantly the administrative burden to the Department or to State agencies, nor will they affect overall program costs since the FMNP is funded by an annual appropriation.

C. Regulatory Flexibility Act

This interim final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary, Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. In addition, this interim final rule provides State and local agencies with greater flexibility in operating the

FMNP and reduces the amount of required State matching funds. Recipients and applicants are not expected to be adversely impacted by the changes set forth in this rulemaking.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local or tribal governments or the private sector of $100 million or more in any one year. This rule is therefore not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12372

The WIC Farmers' Market Nutrition Program (FMNP) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.572. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and related Notice (48 FR 29115, June 24, 1983), this Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

F. Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13121.

1. Prior Consultation With State Officials

Prior to drafting, State agencies provided input to Congress and FNS on recommended changes to the FMNP legislation and regulations. Meetings were held to provide State and local agencies with the opportunity to make recommendations on changes to the FMNP. The changes in the legislation, as reflected in this interim final rule, represent input from State and local agencies. Further, because the FMNP is a State-administered, Federally funded program, FNS regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program and policy issues.

2. Nature of Concerns and the Need To Issue This Rule

This interim final rule implements nondiscretionary provisions in Public Law 108–265 that provide FMNP State and local agencies greater flexibility in authorizing roadside stands, increase the maximum Federal benefit level and reduce the amount of State matching funds that State agencies are required to provide. These changes represent recommendations made by FMNP State agencies.

3. Extent to Which We Meet Those Concerns

This interim final rule provides FMNP State and local agencies with greater flexibility in how they operate the program and reduces the amount of State matching funds needed to operate the program.

G. Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** section of the final rule preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Farmers' Market Nutrition Program, the administrative procedures are as follows: Farmers, farmers' markets, and roadside stands—State agency hearing procedures issued pursuant to 7 CFR 248.16.

H. Civil Rights Impact Analysis

FNS has reviewed this interim final rule in accordance with the Departmental Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and of the characteristics of WIC Program participants who comprise the target population served by the FMNP, FNS has determined that there is no way to soften their effect on any of the protected classes. All data available to FNS indicate that protected individuals have the same opportunity to participate in the FMNP as non-protected individuals. FNS specifically prohibits State and local agencies operating the FMNP from discrimination based on race, color, national origin, gender, age, and disability (see FMNP nondiscrimination policy at 7 CFR 248.7(a)). Discrimination in any aspect of program administration is prohibited by title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 (Pub. L. 94–135), and WIC Program regulations and instructions.

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they are implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995. The regulations for the FMNP at 7 CFR part 248 contain information collections that have been approved by OMB under #0584–0447.

J. E-Government Act Compliance

FNS is committed to complying with the E–Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. State Plan amendments regarding the implementation of the provisions contained in this rule, as is the case with the entire State Plan, may be transmitted electronically by the State

agency to FNS. Also, State agencies may provide FMNP program information, as well as their financial reports, to FNS electronically.

Good Cause Determination

As discussed above, the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265, contained provisions related to the FMNP that must be implemented exactly as set forth in the legislation, with no discretion exercised by the Department regarding such implementation. Further, State agencies have already been informed that these nondiscretionary provisions must be implemented prior to the issuance of amendments to the program regulations. Therefore, Under Secretary Nancy Montanez Johner has determined, in accordance with 5 U.S.C. 553(b), that prior notice and comment would be unnecessary, and that good cause exists for making this rule effective without first publishing a proposed rule.

II. Background

A. What are the new legislative changes to the FMNP?

On June 30, 2004, President George W. Bush signed Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004, hereinafter referred to as ''the Act'', which included three nondiscretionary provisions regarding the FMNP. The three provisions include an option for State agencies to authorize roadside stands, a change in the required State matching funds to operate the program, and an increase in the maximum Federal benefit level. This interim final rule implements these nondiscretionary FMNP provisions verbatim as reflected in section 203(h) of the Act. No discretion has been exercised by the Department in the implementation of these provisions.

1. Roadside Stands

Section 203(h)(1)of the Act amended Section 17(m)(1) of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1786(m)(1)) by providing State agencies the option to authorize roadside stands to accept FMNP coupons from recipients. This provision of the law was effective October 1, 2004.

Previously, State agencies could authorize farmstands or roadside stands only in situations where recipient access to farmers' markets was an issue and only with prior FNS approval. In fiscal year (FY) 2003, just over 1,000 roadside stands nationwide were authorized to accept FMNP coupons. In FY 2006, more than 2,100 roadside stands were authorized to accept FMNP coupons.

Accordingly, the regulatory definition of ''farmer'' has been revised to include farmers with roadside stands. Therefore, if not otherwise specified, references in the FMNP regulations to the term ''farmer'' will also refer to farmers with roadside stands.

The regulatory definition of ''farmers' market'' has been revised to delete the existing reference to FNS approval of farmstands or roadside stands when there are participant access issues. With this revision, the definition of ''farmers' market'' will be consistent in the FMNP and the Senior Farmers' Market Nutrition Program. In addition, the definition of ''Farmstand'' in § 248.2 has been removed and the definition of ''Roadside stand'' has been added; the definition of ''Roadside stand'' remains the same as the prior definition of ''Farmstand.'' Further, throughout 7 CFR part 248 the term ''Farmstand'' has been changed to ''Roadside stand''. References throughout 7 CFR part 248 to farmers and farmers' markets have been revised to add the words ''roadside stand,'' such as in § 248.4, § 248.10, and § 248.17.

2. State Matching Funds

Section 203(h)(2) of the Act amended Section 17(m)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(3)) by reducing the amount of matching funds necessary to operate the FMNP. Previously, State agencies were required to match 30 percent of the total cost of the program, i.e., both administrative and food costs. The new provision requires State agencies to match 30 percent of administrative costs, which constitute up to 17 percent of total program costs, or up to 19 percent of total program costs for State agencies that receive additional FMNP administrative funds for market development or technical assistance. Indian State agencies are still permitted to provide a lower match, but not less than 10 percent matching of the administrative cost of the program. This provision of the law was also effective October 1, 2004.

Following is an example of the amount of the State match requirement under the new and old requirements. The maximum administrative cost rate of 17 percent contained in 7 CFR 248.12 (a)(1)(i) is used for purposes of this example.

NEW MATCH REQUIREMENT

Federal Grant	$500,000
Administrative Rate	× 17%
Total Fed. Admin. Amount	$85,000
Percent of Federal Cost	÷ 70%
Total Estimate Admin. Cost	$121,429
State Admin. Percent	× 30%
State Admin. Match	$36,429

OLD MATCH REQUIREMENT

Federal Grant	$500,000
Percent Federal Cost	÷ 70%
Total Estimated Cost	$714,286
State Percent of Cost	× 30%
State Match	$214,286

Under FMNP regulations, there are a variety of sources that State agencies can use to meet the State matching requirement. These sources continue to include State, local or private funds, program income and in-kind contributions.

The net effect of only requiring a State match on the total administrative costs of the program has resulted in a lower burden on State agencies to come up with matching funds on the total cost of the program. However, State agencies are encouraged to continue to seek State, local and/or private financial support to help supplement the food funds previously required as part of the match requirement. As noted below, this provision in combination with the increase in the maximum Federal benefit level could put more demand on potentially fewer food funds available to operate the program. Therefore, continued financial support in the State becomes increasingly important.

Accordingly, the definition of ''Matching requirement'' has been revised to reflect that State agencies must match 30 percent of the administrative cost of the program. In addition, in § 248.14(a)(1)(i) and (a)(1)(iii) has been revised to reflect this new requirement. Further, a newly designated § 248.14(f) has been revised to reflect the matching requirement for administrative costs.

3. Federal Benefit Level

Section 203(h)(3) of the Act amended Section 17(m)(5)(C)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(5)(C)(ii)) to increase the maximum Federal FMNP benefit level from $20 to $30 annually. The legislative provision to increase the maximum Federal FMNP benefit level was effective June 30, 2004. The minimum benefit level of $10 is unchanged.

State agencies now have the option to increase their FMNP benefit levels to $30, but are not required to do so. Therefore, a State agency must determine, within its grant level, whether it intends to implement this option. Accordingly, § 248.8(b) has been revised to change the maximum Federal benefit level to $30.

B. What other changes are made by the final rule?

The definition of ''Total FMNP costs'' has been removed since it is no longer needed. This term was used when State agencies were required to provide State matching funds that equaled 30 percent of the total cost of the FMNP. In addition, § 248.7, Nondiscrimination, has been amended to change the Department's address for the submission of discrimination complaints.

Currently, in § 248.17(c)(1)(i) of the FMNP regulations, each State agency must conduct onsite monitoring visits of a minimum of 10 percent of its authorized farmers and a minimum of 10 percent of its authorized farmers' markets, including those authorized farmers and outlets identified by the State agency as being at the highest risk for program violations and noncompliance. This interim final rule, in §§ 248.10(e) and 248.17(c)(1)(i), clarifies the Department's current policy that State agencies are also required to monitor roadside stands, including a minimum of 10 percent of its authorized roadside stands annually. In addition, as currently required in FMNP regulations for newly authorized farmers and farmers' markets, a newly authorized roadside stand's first year of operation in the FMNP is considered a high-risk indicator. Other high-risk indicators for roadside stands may be defined by the State agency.

State agencies are encouraged to coordinate and consolidate monitoring activities when a State agency administers both the FMNP and the Senior Farmers' Market Nutrition Program. A review by one program can be counted by the other program toward the monitoring requirement, provided that appropriate sanction action is taken for all violations found.

List of Subjects in 7 CFR Part 248

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

■ For the reasons set forth in the preamble, 7 CFR part 248 is amended as follows:

PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

■ 1. The authority citation for part 248 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 2. In § 248.2:
■ a. Revise the first and last sentences of the definition of ''Farmer'';
■ b. Revise the definition of ''Farmers' market'';
■ c. Remove the definition of ''Farmstand'';
■ d. Revise the first and second sentences of the definition of ''Matching requirement'';
■ e. Revise the definition of ''Program or FMNP'';
■ f. Add the definition for ''Roadside stand'' in alphabetical order; and
■ g. Remove the definition of ''Total FMNP costs''.

The revisions and addition read as follows:

§ 248.2 Definitions.

* * * * *

Farmer means an individual authorized to sell produce at participating farmers' markets and/or roadside stands. * * * A participating State agency has the option to authorize individual farmers, farmers' markets and/or roadside stands.

Farmers' market means an association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers.

* * * * *

Matching requirement means State, local or private funds, or program income, equal to not less than 30 percent of the administrative FMNP cost for the fiscal year. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds, but not less than 10 percent of the administrative cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. * * *

* * * * *

Program or FMNP means the WIC Farmers' Market Nutrition Program authorized by section 17(m) of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1786(m)), as amended. The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is authorized by section 17 of the CNA, as amended. Within section 17, section 17(m) authorizes the FMNP.

* * * * *

Roadside stand means a location at which an individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market.

* * * * *

■ 3. Amend Part 248 by removing the words ''farmstand'' or ''farmstands'' wherever they appear and add in their place the words ''roadside stand'' or ''roadside stands''.

■ 4. In § 248.4:
■ a. Revise paragraph (a)(10)(i);
■ b. Remove paragraph (a)(10)(ii);
■ c. Redesignate paragraphs (a)(10)(iii) through (a)(10)(ix) as paragraphs (a)(10)(ii) through (a)(10)(viii);
■ d. Revise newly redesignated paragraphs (a)(10)(iii) and (a)(10)(iv); and
■ e. Revise paragraphs (a)(12) and (a)(13), and the first sentence in paragraph (a)(14).

The revisions read as follows:

§ 248.4 State Plan.

(a) * * *

(10) * * *

(i) Criteria for authorizing farmers' markets and/or roadside stands;

* * * * *

(iii) Procedures for monitoring farmers, farmers' markets and/or roadside stands;

(iv) Description of system for identifying high risk farmers, farmers' markets and/or roadside stands and procedures for sanctioning farmers, farmers' markets and/or roadside stands:

* * * * *

(12) System for ensuring that FMNP coupons are redeemed only by authorized farmers, farmers' markets and/or roadside stands and only for eligible foods.

(13) System for identifying FMNP coupons which are redeemed or submitted for payment outside valid dates or by unauthorized farmers, farmers' markets and/or roadside stands.

(14) A copy of the written agreement to be used between the State agency and authorized farmers, farmers' markets and/or roadside stands. * * *

* * * * *

■ 5. In § 248.7, revise the first sentence in paragraph (b) to read as follows:

§ 248.7 Nondiscrimination.

* * * * *

(b) * * * Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, USDA, Office of Adjudication and Compliance, Room 326–W, Whitten Building, 14th and Independence Avenue, SW., Washington, DC 20250–9410 (or call (800) 795–3272 (voice) or (202) 720–

6382 (TTY)), or with the office established by the State agency to handle discrimination grievances or complaints. * * *

■ 6. In § 248.8, revise paragraph (b) to read as follows:

§ 248.8 Level of benefits and eligible foods.

* * * * *

(b) *The value of the Federal benefits received*. The value of the Federal FMNP benefit received by each recipient, or by each family within a household in those States which elect to issue benefits on a household basis under § 248.6(c) may not be less than $10 per year nor more than $30 per year.

■ 7. In § 248.10:

■ a. Revise the introductory text of paragraph (a);

■ b. Revise paragraphs (a)(1), (a)(2), (a)(3), (a)(6) and (a)(7);

■ c. Revise the second sentence in the introductory text of paragraph (b);

■ d. Revise paragraph (b)(1) introductory text, paragraph (b)(1)(xii), paragraph (b)(2) introductory text, and paragraphs (b)(3), (b)(4), (b)(5), and (b)(6);

■ e. Revise the introductory text of paragraph (e);

■ f. Revise the first and last sentences in paragraph (e)(2);

■ g. Revise the first and second sentences in paragraph (e)(3);

■ h. Revise paragraph (i)(1); and

■ i. Revise the last sentence in paragraph (k).

The revisions read as follows:

§ 248.10 Coupon and market management.

(a) *General*. This section sets forth State agency responsibilities regarding the authorization of farmers, farmers' markets, and roadside stands. The State agency is responsible for the fiscal management of, and accountability for, FMNP-related activities for farmers, farmers' markets and roadside stands. Each State agency may decide whether to authorize farmers individually, farmers' markets, roadside stands, or all of the above. All contracts or agreements entered into by the State agency for the management or operation of farmers, farmers' markets and roadside stands shall conform with the requirements of 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(1) Only farmers, farmers' markets and roadside stands authorized by the State agency may redeem FMNP coupons. Only farmers authorized by the State agency or that have a valid agreement with an authorized farmers' market may redeem coupons.

(2) The State agency shall establish criteria for the authorization of individual farmers, farmers' markets and roadside stands. Any authorized farmer, farmers' market and roadside stand must agree to sell recipients only those foods identified as eligible by the State agency, in exchange for FMNP coupons. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP, except individuals employed by a farmer otherwise qualified under these regulations, or individuals hired by a nonprofit organization to sell produce at farmers' markets or roadside stands on behalf of local farmers.

(3) The State agency shall ensure that an appropriate number of farmers, farmers' markets and/or roadside stands are authorized for adequate recipient access in the area(s) proposed to be served and for effective management of the farmers, farmers' markets and/or roadside stands by the State agency. The State agency may establish criteria to limit the number of authorized farmers, farmers' markets and/or roadside stands.

* * * * *

(6) Authorized farmers, farmers' markets and roadside stands shall comply with the requirements of Title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on non-discrimination (7 CFR parts 15, 15a and 15b), and FNS Instructions as outlined in § 248.7.

(7) The State agency shall ensure that there is no conflict of interest between the State or local agency and any participating farmer, farmers' market and roadside stand.

(b) * * * The agreement shall be signed by a representative who has legal authority to obligate the farmer, farmers' market and/or roadside stand. * * *

(1) The farmer, farmers' market and roadside stand shall:

* * * * *

(xii) Notify the State agency if any farmer, farmers' market and/or roadside stand ceases operation prior to the end of the authorization period.

(2) The farmer, farmers' market and roadside stand shall not:

* * * * *

(3) Neither the State agency nor the farmer, farmers' market nor a roadside stand has an obligation to renew the agreement. Either the State agency or the farmer, farmers' market or a roadside stand may terminate the agreement for cause after providing advance written notification.

(4) The State agency may deny payment to the farmer, farmers' market or roadside stand for improperly redeemed FMNP coupons and may demand refunds for payments already made on improperly redeemed coupons.

(5) The State agency may disqualify a farmer, farmers' market or roadside stand for FMNP abuse. The farmer, farmers' market and/or roadside stand has the right to appeal a denial of an application to participate, a disqualification, or a FMNP sanction by the State agency. Expiration of a contract or agreement with a farmer, farmers' market or roadside stand, and claims actions under § 248.20, are not appealable.

(6) A farmer, farmers' market or a roadside stand which commits fraud or engages in other illegal activity is liable to prosecution under applicable Federal, State or local laws.

* * * * *

(e) *Monitoring and review of farmers, farmers' markets, roadside stands and local agencies*. The State agency shall be responsible for the monitoring of farmers, farmers' markets, roadside stands and local agencies within its jurisdiction. This shall include developing a system for identifying high risk farmers, farmers' markets, and roadside stands and ensuring on-site monitoring, conducting further investigation, and sanctioning of such farmers, farmers' markets, or roadside stands as appropriate.

* * * * *

(2) Each State agency shall rank participating farmers, farmers' markets and roadside stands by risk factors, and shall conduct annual, on-site monitoring of at least 10 percent of farmers, 10 percent of farmers' markets and 10 percent of roadside stands which shall include those farmers, farmers' markets and roadside stands identified as being the highest risk. * * * A State agency participating in the FMNP for the first time shall, in lieu of applying the high-risk indicators, randomly select 10 percent of its participating farmers, 10 percent of its participating farmers' markets, and 10 percent of its participating roadside stands for monitoring visits.

(3) The following shall be documented for all on-site farmers, farmers' markets, and roadside stands monitoring visits. At a minimum, documentation must include the names of the farmer, farmers' market or roadside stand and the reviewer; date of review; nature of problem(s) detected or the observation that the farmer, farmers' market or roadside stand appears to be in compliance with FMNP

requirements; a record of interviews with recipients, market managers and/or farmers; and the signature of the reviewer. * * *

* * * * *

(i) * * *

(1) A list of names and addresses of authorized farmers, farmers' markets and roadside stands at which FMNP coupons may be redeemed.

* * * * *

(k) * * * State agency policies shall ensure that a farmer that is disqualified from the FMNP at one market or roadside stand shall not participate in the FMNP at any other farmers' market or roadside stand in the State's jurisdiction during the disqualification period.

■ 8. In § 248.14, revise paragraphs (a)(1)(i) and (a)(1)(iii) to read as follows:

§ 248.14 Distribution of funds.

(a) * * *

(1) * * *

(i) *Match amount.* As a prerequisite to the receipt of Federal funds, a State agency must agree to contribute State, local or private funds, or program income, equal to not less than 30 percent of the total administrative FMNP cost. The Secretary may negotiate a lower percentage of matching funds, but not lower than 10 percent of the administrative cost of the program, in the case of an Indian State agency that demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The State agency may contribute more than the minimum amount. State, local or private funds for similar programs as defined in § 248.2 may satisfy the State matching requirement.

* * * * *

(iii) *Failure to match.* A State agency's failure to meet the State matching requirement will result in the establishment of a claim for the amount of Federal grant funds not matched. The matching requirement will be considered satisfied if State or other non-Federal matching contributions reported on the final closeout report (required by § 248.15(a)) amount to at least 30 percent of the administrative costs. This match amount may be lower for those Indian State agencies that have demonstrated to the Secretary financial hardship as set forth in paragraph (a)(1)(i) of this section.

* * * * *

■ 9. In § 248.17:

■ a. Revise the third sentence in the introductory text of paragraph (b);

■ b. Revise paragraph (b)(2)(iv); and

■ c. Revise the first sentence of paragraph (c)(1)(i).

The revisions read as follows:

§ 248.17 Management evaluations and reviews.

* * * * *

(b) * * * These evaluations shall also include reviews of selected local agencies, and on-site reviews of selected farmers, farmers' markets and roadside stands. * * *

* * * * *

(2) * * *

(iv) Upon notification from the State agency that corrective action has been taken, FNS will assess such action, and if necessary, perform a follow-up review to determine if the noted deficiencies have been corrected. FNS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed. Compliance buys can be required if, during FNS management evaluations by regional offices, a State agency is found to be out of compliance with its responsibility to monitor and review farmers, farmers' markets and roadside stands.

* * * * *

(c) * * *

(1) * * *

(i) Annual monitoring reviews of participating farmers, farmers' markets and roadside stands, including on-site reviews of a minimum of 10 percent of farmers, 10 percent of farmers' markets, and 10 percent of roadside stands, which includes those farmers, farmers' markets, and roadside stands identified as being the highest risk. * * *

* * * * *

■ 10. In § 248.25, revise paragraphs (c) and (g) to read as follows:

§ 248.25 FMNP information.

* * * * *

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 61 Forsyth Street, SW., Room 8T36, Atlanta, Georgia 30303.

* * * * *

(g) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 90 Seventh Street, Suite #10–100, San Francisco, California 94103.

Dated: October 17, 2008.

Kate Houston,

Acting Under Secretary, Food, Nutrition, and Consumer Services.

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix: Regulatory Impact Analysis

Title

7 CFR 248: WIC Farmers' Market Nutrition Program: Nondiscretionary Provisions of Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004 Rule

Action

a. *Nature:* Interim Final Rule

b. *Need and purpose:* The interim final rule amends the WIC Farmers' Market Nutrition Program (FMNP) regulations to implement three nondiscretionary provisions mandated in Public Law 108–265, the Child Nutrition and Reauthorization Act of 2004. The three provisions, which (1) give State agencies the option to authorize roadside stands, (2) reduce the required amount of State matching funds, and (3) increase the maximum Federal benefit level, are intended to increase State agency flexibility in managing the Program.

c. *Affected parties:* The parties affected by these regulations are the U.S. Department of Agriculture, WIC FMNP State and local agencies, WIC FMNP recipients, and authorized farmers participating in the WIC FMNP.

Background

Overview

The WIC FMNP was established by Congress in 1992 to provide fresh, unprepared, locally grown fruits and vegetables to participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Women, infants (over 4 months old) and children that have been certified to receive WIC program benefits or who are on a waiting list for WIC certification are eligible to participate in the program. State agencies may serve some or all of the recipient categories. The WIC FMNP also assists farmers by expanding the awareness of, use of, and sales at farmers' markets.

Lists of the fresh fruits, vegetables, and herbs that can be purchased with WIC FMNP coupons are developed by State agencies. Recipients receive coupons to purchase produce from authorized farmers at any authorized farmer's market or roadside stand. Currently, 37 State agencies, 5 Indian Tribal Organizations (ITOs), the District

of Columbia, Guam, and Puerto Rico operate the FMNP.

Between fiscal years (FY) 1998 and 2006, the total number of WIC FMNP recipients increased by 86 percent. Breastfeeding and postpartum women accounted for the largest average annual growth among all WIC FMNP recipients over the eight year period. However, children continued to make up the largest number of recipients comprising over 50 percent of all recipients in 2006.

TABLE 1—WIC FMNP RECIPIENTS, 1998–2006

Fiscal year	Pregnant women	Breastfeeding women	Postpartum women	Infants	Children	Total recipients
1998	258,281	76,022	81,993	109,813	819,611	1,345,720
1999	309,647	87,005	124,669	128,628	882,850	1,532,799
2000	339,659	147,721	134,409	144,745	1,134,604	1,901,138
2001	343,849	156,108	179,599	164,266	1,308,135	2,151,957
2002	361,914	149,382	164,181	182,640	1,304,265	2,162,382
2003	393,283	176,497	202,003	212,183	1,388,290	2,372,256
2004	418,803	194,261	212,395	207,395	1,483,870	2,516,724
2005	449,118	220,196	231,477	244,143	1,541,276	2,686,210
2006	433,632	186,724	207,329	386,194	1,283,283	2,497,162

Source: FNS administrative data.

Among State agencies, grant levels can differ widely. In FY 2006, over $23 million in WIC FMNP grants were issued. Six percent of the State agencies received grants between $1,000,000 and $4,000,000 and almost 48 percent received grants less than $500,000. The minimum grant was in the amount of $6,337 and the maximum grant was $3,769,708.

TABLE 2—SUMMARY OF 2006 WIC FMNP STATE GRANT FUNDING ($)

Mean grant amount	529,109
Median grant amount	310,342
Minimum grant amount	6,337
Maximum grant amount	3,769,708

TABLE 2—SUMMARY OF 2006 WIC FMNP STATE GRANT FUNDING ($)—Continued

Total grant amount	23,809,901

Source: FNS administrative data.

WIC FMNP Benefits

The WIC FMNP provides benefits to women, infants, and children who have been certified to participate in WIC or who are on a WIC waiting list. WIC FMNP benefits are in the form of coupons, which recipients redeem for fresh produce and nutrition education. Prior to the Child Nutrition and Reauthorization Act of 2004, State agencies could issue coupons to recipients with a maximum Federal benefit level of $20 per year. Typically, all recipients within a State receive the same benefit level. As shown in Table 3 below, over the past ten years, both the aggregate value of issued WIC FMNP coupons and the aggregate value of the redeemed coupons have increased by approximately 238 percent from $11,330,202 to $38,244,123 and from $7,007,902 to $22,493,077, respectively. During the same period of time, the rate of redemptions remained relatively constant averaging 60 percent. However, despite redemption rates averaging around 60 percent, most State agencies spend over 80 percent of the Federal food dollars received for the WIC FMNP by taking redemption rates into account when issuing coupons to eligible participants.

TABLE 3—WIC FMNP REDEMPTION RATES, 1994–2006

Fiscal year	WIC FMNP coupons issued ($)	WIC FMNP coupons redeemed ($)	WIC FMNP redemptions/ issuances (%)
1994	11,330,202	7,007,902	62
1995	14,483,209	8,963,640	62
1996	14,712,669	9,086,455	62
1997	14,088,940	8,434,526	60
1998	21,021,239	12,440,730	59
1999	24,439,166	13,931,410	57
2000	30,826,175	17,572,939	57
2001	36,593,280	20,613,402	56
2002	36,193,585	20,809,843	57
2003	39,009,229	24,271,575	62
2004	43,760,565	26,946,970	62
2005	40,295,432	23,444,438	58
2006	38,244,123	22,493,077	59
Average (1994–2006)	28,076,755	16,616,6855	59

Source: FNS administrative data.

Nutrition education is provided to FMNP recipients by the State agency, often through an arrangement with the local WIC agency. Other educators and program partners may provide nutrition education and/or educational information to FMNP recipients. For example, Cooperative Extension Programs, local chefs, farmers or farmers' markets associations, and various other non-profit or for-profit organizations may provide nutrition

education to FMNP recipients. These educational arrangements help to encourage FMNP recipients to improve and expand their diets by adding fresh fruits and vegetables, as well as educate them on how to select, store and prepare the fresh fruits and vegetables they buy with their FMNP coupons.

WIC FMNP regulations do not specify the number of nutrition education ''contacts'' each recipient must receive. Nutrition education requirements in the Program may be satisfied through coordination with other agencies within the State. Nutrition education is typically provided to WIC FMNP recipients through an arrangement with the local WIC agency. State agencies can enter into agreements with the WIC program to provide FMNP nutrition education in conjunction with WIC nutrition education. The WIC FMNP State/local agency or other educators and program partners may also provide nutrition education and/or educational information to Program recipients. These educational arrangements help to encourage recipients to improve and expand their diets by adding fresh fruits and vegetables, as well as educate them on how to select, store, and prepare the fresh fruits and vegetables they buy with their WIC FMNP coupons. State agencies use administrative funds to support nutrition education.

Eligible WIC participants are issued FMNP coupons in addition to their regular WIC food instruments. These coupons can be used to buy fresh, unprepared fruits, vegetables and herbs from farmers, farmers' markets or roadside stands that have been approved by the State agency to accept FMNP coupons. The farmers, farmers' markets or roadside stands then submit the coupons to the bank or State agency for reimbursement. The Federal food benefit level for FMNP recipients may not be less than $10 and no more than $30 per year, per recipient. However, State agencies may supplement the benefit level.

In addition to providing benefits to low-income women, infants, and children, the WIC FMNP provides small farmers who participate in the Program with additional income through the sale of their produce to FMNP recipients. In FY 2006, 14,259 farmers were authorized to sell their produce at 2,896 authorized farmer's markets and 2,136 authorized roadside stands (see Table 4). These farmers received over $22 million from redemption of WIC FMNP coupons.

TABLE 4—NUMBER OF AUTHORIZED FARMERS, FARMER'S MARKETS, AND ROADSIDE STANDS

Fiscal year	WIC FMNP number of authorized farmers	WIC FMNP number of authorized farmer's markets	Number of authorized farm/roadside stands
1998	9,589	1,253	276
1999	11,439	1,591	236
2000	12,897	1,622	471
2001	13,741	1,824	708
2002	13,176	1,911	913
2003	16,226	2,345	1,078
2004	14,050	2,548	1,583
2005	14,323	2,715	1,999
2006	14,259	2,896	2,136

Source: FNS administrative data.

Cost/Benefit Assessment of Economic and Other Effects

Summary

The interim final rule will amend the WIC FMNP regulations to reflect changes mandated by Public Law 108–265. These changes include allowing WIC FMNP State agencies to authorize roadside stands, increasing the maximum Federal benefit level, and changing the State matching requirement.

The interim final rule is not expected to significantly increase administrative burden upon the Department or State agencies and is intended to provide State agencies with added flexibility in operating the WIC FMNP. The potential costs and benefits that may result from the provisions of the interim final rule will depend on the financial environment in which State agencies operate the WIC FMNP as well as what objectives States will seek to accomplish in their respective programs. For example, if a State agency with a financially constrained WIC FMNP is seeking to preserve its existing number of participants, there will likely be little increase in Federal benefit levels. However, if a State agency chooses to increase its Federal benefit level, the number of participants able to be served may decrease.

Option To Authorize Roadside Stands

Under Public Law 108–265, State agencies now have the option to authorize roadside stands without prior FNS approval and without the requirement that access be an issue for recipients. Based on the results of an informal survey conducted by FNS regional staff, it appears that this provision has not had a significant effect on the number of roadside stands that have been authorized since this provision went into effect on October 1, 2004. In State agencies where the number of authorized stands did increase, this increase appeared to be a result of normal growth rather than of changes in the authorization process. However, for at least one State agency (Oregon), the number of roadside stands in the WIC FMNP did increase as a result of the provision. This State agency indicated that additional roadside stands were authorized so that the same stands that were already authorized under the Senior Farmer's Market Nutrition Program (SFMNP) would also be authorized under the WIC FMNP. In such an instance, there would likely be little burden imposed on State agencies since they already incur the administrative costs of monitoring those stands. FNS realizes that the effects of this provision may not be fully realized in such a short period of time and have therefore considered various other effects which may occur as a result of the provision to allow State agencies to authorize roadside stands.

Under the interim final rule, in areas where there is a relatively large population of WIC FMNP recipients and where access to farmer's markets and/or roadside stands is not an issue, farmers operating roadside stands will now have an incentive to seek authorization to participate in the WIC FMNP. If State agencies authorize more roadside stands in areas where there is already sufficient access, the interim final rule might result in a higher concentration of

roadside stands and farmer's markets within commuting areas. In this case, the increase in the number of farmers from which to buy fresh produce may allow recipients to stretch the value of their coupons by being able to comparison-shop and find the best prices. It is, however, not expected that a higher concentration of farmers will lead to a significant decrease in the price of fresh fruits, vegetables, and herbs among all WIC FMNP market outlets given the relatively small number of FMNP recipients within States.

If the quantity of roadside stands increases in areas where access is limited, WIC FMNP recipients will have better access to fresh, locally grown fruits, vegetables, and herbs and may be more likely to redeem their coupons. It is possible that increases in the number of authorized stands above normal growth levels may result in an increase in redemptions if WIC FMNP recipients who previously were not redeeming their coupons begin to do so as a result of the increased access and/or convenience that additional roadside stands might provide. However, because roadside stands could already be authorized in areas where access was limited, with FNS approval, it is not expected that the interim final rule will significantly increase the number of authorized roadside stands in isolated areas. Due to limited available information and various possible scenarios, there is some uncertainty regarding the long term effects of this provision.

Change in State Matching Requirements

Prior to Public Law 108–265, State agencies have been required to match 30 percent of the total cost of the WIC FMNP program. Because of fiscal conditions, some State agencies have had difficulty meeting the 30 percent program match. The match has been characterized as an ''obstacle to program growth'' in participating WIC FMNP State agencies and limited ''expansion to new states''.[1] Public Law 108–265 changed the basis for the amount of matching funds necessary to operate the WIC FMNP so that State agencies would only be required to match 30 percent of the total administrative cost of the program, which by stature continues to be limited to 17 percent of program costs. Indian Tribal Organizations are still permitted to provide a lower match, but not less than a 10 percent match of the total administrative cost.

This provision reduces the financial requirement States must make in order to operate the WIC FMNP. However, if State agencies do not continue to use State or local funds, private funds, or in-kind contributions to match the food as well as the administrative portion of the Federal grant, their total funds available to operate the FMNP will decrease. For example, in FY 2004, the total Federal grant for the State of Minnesota was $396,667, which was about the median FY 2004 grant. Under the requirement for a 30 percent match of total program costs, the total WIC FMNP funds available in FY 2004 were $566,667. Under the new matching requirement, the Federal grant amount would not change. However, the State of Minnesota would only be required to match 30 percent of the total administrative cost of the program. As shown below, the total WIC FMNP funds available would be $425,567. This is $141,100 less than under the old matching requirement. The amount of the shortfall is equal to the State food match under the old matching requirement.

TABLE 5—DIFFERENCE BETWEEN OLD AND NEW MATCHING REQUIREMENTS

Federal grant = $396,667	Old matching requirements		New matching requirements	
	Administration	Food	Administration	Food
Percentage Split	17%	83%	17%	83%
Federal Contribution	$67,433	$329,234	$67,433	$329,234
Federal Percent Contribution	70%	70%	70%	100%
Estimated Available Funds	$96,333	$470,334	$96,333	$329,234
State Percent Contribution	30%	30%	30%	0%
State Match	$28,900	$141,100	$28,900	$0
Total Program Funds Available	$566,667		$425,567	

A decrease in food funds may result in State agencies having to either decrease recipient benefit levels and/or serve fewer recipients. However, some State agencies may choose to decrease the share of funds allocated towards administration so as to increase the share of funds allocated for food. To compensate for reduced administration and nutrition education funding, WIC FMNP State agencies may enter into agreements with local WIC programs to provide relevant WIC nutrition education sessions that can be used to meet the nutrition education requirement of the WIC FMNP. Based on guidance issued in OMB Circular A–87 and the Department's WIC Policy Memo #2002–5, allowable FMNP nutrition education costs may be charged to WIC funds since under the new matching requirement State agencies may choose to spend the matching funds on food, administration, or both.

Farmers participating in the WIC FMNP will lose income earned from the redemption of WIC FMSP coupons resulting from a decrease in food funds. However, by lowering the financial commitment that State agencies must make in order to receive WIC FMNP funds, current State agencies will be more likely to take expansion funds, if offered, and new State agencies will have an easier time joining the Program.

Change in Maximum Federal Benefit

Since the inception of the FMNP, the maximum Federal benefit, which unlike some other nutrition programs whose benefits are annually adjusted for inflation, has not changed. The maximum Federal benefit of $20 per year was established in 1992 and would be equivalent to $33 in 2005 dollars.[2] The proposed rule amends current regulations to implement the provision in Public Law 108–265, which increases the annual maximum Federal WIC FMNP benefit level from $20 to $30

[1] Wambles, Don. National Association of Farmers' Market Nutrition Programs. *Statement Presented to U.S. Senate Agriculture, Nutrition, and Forestry Committee.* April 3, 2003.

[2] Inflation rate obtained from the Bureau of Labor Statistics, Consumer Price Index for fresh fruits and vegetables. (*http://www.bls.gov/cpi/home.htm*).

with the $10 minimum benefit level remaining the same. State agencies have the option of increasing their WIC FMNP benefit level up to the new maximum, but are not required to do so.

Because of the changes made to the matching requirement, which may lower the amount of program funds available, it is expected that many State agencies will not be able to increase the benefit level. If State agencies do raise benefits, it is possible that not as many people will be able to be served by the Program. For example, given the number of WIC FMNP recipients and the benefit level in Minnesota in FY 2004, with a redemption rate of 60 percent, the total value of redeemed coupons would have been $584,664.[3] If funds available for the WIC FMNP remain constant at approximately $585,000 as the benefit level increased, the number of recipients able to be served would decrease from 48,722 recipients receiving a $20 coupon to 32,500 receiving a $30 coupon.

EXAMPLE: MINNESOTA

Benefit level per recipient	Value of coupon ($)	Number of WIC FMNP recipients, FY 2004	Average percentage of redeemed coupons	Total cost of redeemed FMNP coupons ($)
Previous Benefit Level	20.00	48,722	60%	584,664
FY2005 Maximum Benefit Level	30.00	32,500	60%	585,000

The state of Minnesota did not increase the value of WIC FMNP coupons in 2005. The calculation was done for the purpose of an example only. The average percent of redeemed coupons is based on the average national rate of redemption for FY 2000–FY 2004.

If State agencies choose to increase benefit levels, WIC FMNP recipients will benefit from the ability to purchase and consume more fresh fruits, vegetables, and herbs. Additionally, it is possible that redemption rates will increase as some participants, who previously did not utilize their coupons, may be enticed to start utilizing them given the higher value.

FNS regional offices have indicated that in FY 2005, less than 10 State agencies increased the Federal benefit level and not all of those State agencies increased it to the $30 annual maximum. Of the State agencies that did increase benefits, the number of WIC FMNP recipients served did not decrease. Some State agencies indicated that they would have increased their benefit level, but were unable to do so because of their Federal 2005 grant levels. This implies that if provided with sufficient Federal funding to maintain current caseloads, many of the State agencies would increase their Federal benefit level, but would choose not to increase it if it meant serving fewer recipients.

[FR Doc. E8–26099 Filed 10–31–08; 8:45 am]

BILLING CODE 3410–30–P

[3] This calculation only takes into account the Federal food benefits and does not make any assumptions regarding the level of State food benefits.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2008–0107]

Addition of Russia and Azerbaijan to the List of Regions Where African Swine Fever Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products by adding Russia and Azerbaijan to the list of regions where African swine fever exists. We are taking this action because outbreaks of African swine fever have been detected in Russia and Azerbaijan. This action will restrict the importation of pork and pork products into the United States from Russia and Azerbaijan and is necessary to prevent the introduction of African swine fever into the United States.

DATES: This interim rule is effective November 3, 2008. However, we are imposing these restrictions retroactively to November 19, 2007, for Russia, and to January 28, 2008, for Azerbaijan. We will consider all comments that we receive on or before January 2, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal: Go to http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0107* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0107, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0107.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Javier Vargas, Animal Scientist, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–0756.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including

rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, swine vesicular disease, classical swine fever, and African swine fever (ASF). These are dangerous and destructive diseases of ruminants and swine.

Section 94.8 of the regulations lists regions of the world where ASF exists or is reasonably believed to exist and imposes restrictions on the importation of pork and pork products into the United States from those regions.

In December 2007, Russia reported an outbreak of ASF to the World Organization for Animal Health (OIE). ASF was detected on November 5, 2007, and Russia's Ministry of Agriculture and Food (MAF) confirmed the outbreak on November 19, 2007. The MAF has reported a total of 19 outbreaks after the initial detection and believes the source of the infection to be transboundary migration of wild boars in the area.

Azerbaijan reported an outbreak of ASF in Qebele, in the north-central part of the country. According to Azerbaijan's report to the OIE, the outbreak started on January 22, 2008, and was confirmed by Azerbaijan's Ministry of Agriculture January 28, 2008.

Therefore, in order to prevent the introduction of ASF into the United States, we are amending the regulations by adding Russia and Azerbaijan to the list of regions in § 94.8 where ASF exists or is reasonably believed to exist. As a result of this action, the importation into the United States of pork and pork products from Russia and Azerbaijan will be restricted. We are imposing these restrictions retroactively to November 19, 2007, for Russia, and to January 28, 2008, for Azerbaijan, which are the dates that the presence of ASF in Russia and Azerbaijan was confirmed.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of ASF into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This interim rule amends the regulations by adding Russia and Azerbaijan to the list of regions in which ASF exists. This action is necessary on an emergency basis to prevent the introduction of ASF into the United States.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

The U.S. swine industry plays an important role in the U.S. economy. Cash receipts from marketing meat animals were about $14.8 billion in 2007, and averaged $14.6 billion between 2004 and 2007.[1] U.S. pork production increased from 7,764,000 metric tons (MT) in 1996 to 9,962,000 MT in 2007, an annual growth rate of about 2.4 percent. Similarly, consumption increased from 7,619,000 MT to 8,964,000 MT. During the same period, U.S. pork exports increased from 440,000 MT to 1,424,000 MT, by far outpacing imports. Net exports increased from 159,000 MT to 985,000 MT.[2] Swine and related product exports generated over $2.1 billion in sales in 2007. Other agricultural and nonagricultural sectors are dependent on the swine industry for their economic activity. Maintaining and expanding U.S. export markets depends in part on preventing transmission of foreign diseases to U.S. swine.

Russia's swine inventory and pork production can be characterized as ranging from moderate to large. For the years 2002–2007, the number of swine in Russia averaged about 17 million,[3] while pork production averaged 1,752,000 MT. Russia was a net importer of pork and pork products during this period, with annual consumption exceeding production by an average of about 771,000 MT.[4] Azerbaijan has a much smaller swine inventory and produces much less pork than Russia. For the years 2002–2006, it had average swine stock of fewer than 19,500 head and produced only 1,520 MT of pork. Azerbaijan is a net importer of pork and pork products. Neither Russia nor Azerbaijan has a history of exporting swine, pork, or pork products to the United States.

The Small Business Administration (SBA) has established size standards for determining whether firms are considered small under the Regulatory Flexibility Act. Under SBA standards, meat processing establishments (North American Industry Classification System [NAICS] 311612) with no more than 500 employees and meat and meat product wholesalers (NAICS 424470) with no more than 100 employees are considered small. In 2002, there were 1,335 companies in the United States that processed and sold meat. More than 97 percent of these establishments are considered to be small entities and had average sales of $15.4 million, while large meat processors had average sales of $188 million. In 2002, there were 2,535 meat and meat product wholesalers in the United States. Of these establishments, 2,456 (97 percent) employed not more than 100 employees and are thus considered small by SBA standards. Small meat wholesalers had average sales of $9.3 million, while large meat wholesalers had average sales of $131 million.[5]

The majority of U.S. swine and pork producers (NAICS 112210) are also small entities.[6] According to the 2002 Census of Agriculture, that year there were 82,028 hog and pig operations with sales of about 185 million hogs and pigs valued at $12.4 billion. These facilities are considered to be small if their annual receipts are not more than $750,000. Over 83 percent (68,083) of these operations are considered to be small, with sales of fewer than 2,000 hogs and pigs. Small operations had a total inventory of 16.3 million (9 percent of all swine) and an average inventory of 237 hogs, while large operations had a total inventory of 168.7 million (91 percent of all swine) and an average inventory of 12,714 hogs. Based on inventory shares in 2002, small operations had annual sales of $1.1 billion and an average income of about $19,400, while large operations had

[1] USDA/Economic Research Services (ERS), Farm Income Costs: Farm Sector Income Forecast, *http://www.ers.usda.gov/briefing/farmincome/data/cr_t3.htm.*

[2] USDA/Foreign Agricultural Service (FAS), Product Supply & Demand (PS&D) Online, 1996–2007, *http://www.fas.usda.gov/dlp/circular//2008/livestock_poultry_04–2008.pdf.*

[3] *http://faostat.fao.org.*

[4] USDA/FAS, Production, Supply, and Demand (PS&D) Online, 1996–2007, *http://www.fas.usda.gov/dlp/circular//2008/livestock_poultry_04–2008.pdf.*

[5] U.S. Census Bureau, 2002 Economic Census: Manufacturing—Industries Series, Wholesale Trade—Subject Series and Transportation and Warehousing—Subject Series, issued August 2006; and SBA, Small Business Size Standards matched to North American Industry Classification System 2002, effective July 2006.

[6] SBA, Small Business Size Standards matched to North American Industry Classification System 2002, effective July 2006 (*http://www.sba.gov/size/sizetable2002.html*).

sales of $11.3 billion with an average income of about $834,000.

No impact is expected as a result of this rule, based on the fact that there is no history of U.S. imports of swine or swine products from Russia or Azerbaijan. Adding Russia and Azerbaijan to the list of regions in which ASF exists or is reasonably believed to exist will have no effect on U.S. producers or consumers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to November 19, 2007, and January 28, 2008; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.8 [Amended]

■ 2. In § 94.8, the introductory text is amended by adding the word ''Azerbaijan,'' after the word ''Armenia,'' and by adding the word ''Russia,'' after the word ''Mauritius,''.

Done in Washington, DC, this 28th day of October 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–26140 Filed 10–31–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 585

[OTS–2008–0017]

RIN 1550–AC14

Prohibited Service at Savings and Loan Holding Companies Extension of Expiration Date of Temporary Exemption

AGENCIES: Office of Thrift Supervision (OTS), Treasury.

ACTION: Final rule.

SUMMARY: OTS is revising its rules implementing section 19(e) of the Federal Deposit Insurance Act (FDIA), which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with respect to a savings and loan holding company (SLHC). Specifically, OTS is extending the expiration date of a temporary exemption granted to persons who held positions with respect to a SLHC as of the date of the enactment of section 19(e). The revised expiration date for the temporary exemption is March 31, 2009.

DATES: *Effective Date:* The final rule is effective on November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Director, Holding Companies and Affiliates, Supervision Policy, (202) 906–7488, Marvin Shaw, Senior Attorney, Regulations and Legislation Division, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On May 8, 2007, OTS published an interim final rule adding 12 CFR part 585. This new part implemented section 19(e) of the FDIA, which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with a SLHC. Section 19(e) also authorizes the Director of OTS to provide exemptions from the prohibitions, by regulation or order, if the exemption is consistent with the purposes of the statute.

The interim final rule described the actions that are prohibited under the statute and prescribed procedures for applying for an OTS order granting a case-by-case exemption from the prohibition. The rule also provided regulatory exemptions to the prohibitions, including a temporary exemption for persons who held positions with respect to a SLHC on October 13, 2006, the date of enactment of section 19(e). This temporary exemption is set to expire on November 3, 2008, unless a case-by-case exemption is filed prior to that expiration date.[1]

OTS is extending the expiration date of the temporary exemption to March 31, 2009. This extension will avoid needless disruptions of SLHC operations while OTS continues to review the public comments and develop a final rule addressing these comments. OTS has concluded that this extension of the exemption is consistent with the purposes of section 19(e) of the FDIA.

Regulatory Findings

Notice and Comment and Effective Date

For the reasons set out in the interim final rule,[2] OTS has concluded that: Notice and comment on this extension are unnecessary and contrary to the public interest under section 552(b)(B) of the Administrative Procedure Act; there is good cause for making the extension effective immediately under section 553(d) of the APA; and the delayed effective date requirements of section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) do not apply.

Regulatory Flexibility Act

For the reasons stated in the interim final rule,[3] OTS has concluded that this extension does not require an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and that this extension should not have a significant

[1] This temporary exemption originally was scheduled to expire on September 5, 2007. OTS extended the expiration date to March 1, 2008, 72 FR 50644 (September 4, 2007), then to June 1, 2008, 73 FR 10985 (February 29, 2008) and most recently to November 3, 2008. 73 FR 30736 (May 29, 2008).

[2] 72 FR at 25953.

[3] 72 FR at 25953–54.

impact on a substantial number of small entities, as defined in the RFA.

Paperwork Reduction Act

OTS has determined that this extension does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Act of 1995

For the reasons stated in the interim final rule,[4] OTS has determined that this extension will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Executive Order 12866

OTS has determined that this extension is not a significant regulatory action under Executive Order 12866.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Agencies to use ''plain language'' in all final rules published after January 1, 2000. OTS believes that the final rule containing the extension is presented in a clear and straightforward manner.

List of Subjects in 12 CFR Part 585

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

■ For the reasons in the preamble, OTS is amending part 585 of chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 585—PROHIBITED SERVICE AT SAVINGS AND LOAN HOLDING COMPANIES

■ 1. The authority citation for 12 CFR part 585 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, and 1829(e).

■ 2. In § 585.100, revise paragraph (b)(2) introductory text to read as follows:

§ 585.100 Who is exempt from the prohibition under this part?

* * * * *

(b) * * *

(2) This exemption expires on March 31, 2009, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 585.110 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

* * * * *

Dated: October 29, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E8–26181 Filed 10–31–08; 8:45 am]

BILLING CODE 6720–01–P

[4] 72 FR at 25954.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 772, and 774

[Docket No. 080215206-81243-01]

RIN 0694 AE29

Wassenaar Arrangement Plenary Agreements Implementation: December 2007 Categories 1, 2, 3, 5 Parts I and II, 6, 7, and 9 of the Commerce Control List, Definitions; December 2006 Solar Cells

Correction

In rule document E8–23278 beginning on page 60910 in the issue of October 14, 2008, make the following corrections:

1. On page 60911, in the second column, under the heading **Revisions to the Commerce Control List**, in the 13th and 14th lines, ''1A006 and 1A007'' should read ''1A006, 1A007, and 3C006''.

2. On the same page, in the same column, under the same heading, in the 18th line, ''3C005, 3C006, 3D001'' should read ''3C005, 3D001''.

[FR Doc. Z8–23278 Filed 10–31–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AM65

Disclosure of Information to Organ, Tissue and Eye Procurement Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts, with changes, a Department of Veterans Affairs (VA) interim final rule that implemented provisions of the Veterans Benefits, Health Care, and Information Technology Act of 2006 concerning disclosure of information to organ, tissue and eye procurement organizations. The regulation will provide authority for VA to provide individually-identifiable VA medical records of veterans or dependents of veterans who are deceased or whose death is imminent to representatives of organ procurement organizations, eye banks, and tissue banks to determine whether the patients are suitable potential donors. This document modifies the interim final rule to clarify the definition of ''near death'' and to correct a grammatical error in the definition of ''procurement organization.'' This document also clarifies that eye bank and tissue bank registration with FDA must have an active status.

DATES: *Effective Date:* November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Stephania Putt, Veterans Health Administration (VHA) Privacy Officer, Office of Information (19F2), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (704) 245–2492.

SUPPLEMENTARY INFORMATION: On August 23, 2007, the Department of Veterans Affairs (VA) published an interim final rule in the **Federal Register** (72 FR 48239) to implement section 204 of Public Law 109–461. We provided a 60-day comment period which ended on October 22, 2007. We received comments from three organizations, the American Association of Tissue Banks (AATB), the Association of Organ Procurement Organizations (AOPO), and the Eye Bank Association of America (EBAA).

AATB and EBAA commented on their support of the provisions in the Interim Final Rule in general. The support of the AATB and EBAA is welcomed.

EBAA commented on the title of the Interim Final Rule and suggested a title of ''Disclosure of Information to Organ, Tissue and Eye Procurement Organizations'' to provide clarification. The title of the Interim Final Rule is just a title of the regulatory packet for tracking and publication purposes; it is not the title of the actual regulations. We are amending the title of the Final Rule to provide a clear understanding of the organizations discussed in this regulation.

AOPO commented that the definition of ''near death'' used in the regulations was vague and recommended the use of clinical triggers in clearly defining near or imminent death. We are amending the definition of ''near death'' to include the use of defined clinical triggers by the health care provider when

determining that death of a patient is imminent.

In its comments, AATB notated that the definition of ''Procurement Organization'' contained a grammatical error by using ''tissue banks'' instead of the singular form. We are amending the definition to reflect ''tissue bank'' and remove the plural form of the word.

AATB and EBAA both recommended that the definition of ''Eye bank and tissue bank'' include language regarding the accreditation of eye bank and/or tissue bank by the EBAA for eyes and AATB for tissues along with the addition of this accreditation requirement to Sections 1.485a(d) and 1.514b(d). The rationale proposed by AATB and EBAA of the additional requirement is the belief that it will provide additional protection of VHA facilities and their respective patient populations. However, no evidence or documentation was provided to support this belief. And though there should be no administrative burden for VHA facilities to verify whether an eye bank or tissue bank is accredited by EBAA or AATB, there is a potential impact on VA's overall donor program. The Food and Drug Administration (FDA) is responsible for reviewing the services provided by registered eye banks and tissue banks across the country. VA has several facilities in rural and remote areas where the number of FDA registered and accredited organ, tissue and eye procurement organizations may be limited. To impose another non-Federal accreditation requirement on these procurement organizations prior to VA's ability to work with the procurement organization may limit VA's capacity to honor a veteran's wish to be an organ donor. For the reasons stated above, VA does not accept the recommendation to require the accreditation of eye bank and/or tissue bank by the EBAA for eyes and AATB for tissue.

EBAA and AOPO made several comments suggesting changes to the preamble language for the published Interim Final Rule. The parameters and contents of rulemakings are dictated by 1 CFR 18.12, *Preamble requirements*. Specifically, paragraph (a) clarifies that a preamble, ''* * * will inform the reader, who is not an expert in the subject area, of the basis and purpose for the rule * * *'' The preamble does not get codified in the Code of Federal Regulations. Thus, when comments deal only with the language of Interim Final preamble sections that do not impact the basis and purpose explained therein, nor the substance of the regulation, it is beyond the scope of the final rule preamble to comment on those comments.

Finally, AATB and EBAA recommended VHA verify the organ, eye or tissue bank status with FDA as being active and not subject to any order to cease, suspend or limit operations. VA has accepted this recommendation and amended the regulatory language at § 1.485a(d) and § 1.514b(d) by adding the requirement for VA medical centers to verify annually with the FDA that an eye bank and tissue bank registration status is active before permitting an eye bank or tissue bank to receive protected health information.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(3)(B), we find that there is good cause to dispense with advance public notice and opportunity to comment on this rule because any delay in promulgating the rule would be contrary to the public interest. In enacting section 204 of Public Law 109–461, Congress recognized the public's immediate need for VA's disclosure of organ donor information and specified that VA shall prescribe rules implementing the new law within 180 days. Also, as documented by information and data on *http://www.organdonor.gov*, the number of patients awaiting organ transplants far exceeds the number of available organs. Every day, 17 patients die waiting for an organ. VA's immediate collaboration with OPOs, eye banks, and tissue banks to facilitate organ, eye and tissue donation will result in individuals receiving lifesaving or life-enhancing transplants that otherwise would be unavailable. Accordingly, it would be contrary to the intent of Congress to delay an initiative that seeks to address a compelling public need, while VA engages in advance notice and opportunity to comment. Pursuant to 5 U.S.C. 553(d), and for the reasons stated above, we also find that there is good cause to dispense with the requirement that a substantive rule be published no less than 30 days before its effective date.

Paperwork Reduction Act of 1995

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

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule governs VA's disclosure of individuals' medical records to certain Organ Procurement Organizations, eye banks, and tissue banks, some of which may be small entities. However, it will not affect a substantial number of small entities and will not have a significant economic impact on any such entity. Therefore, under 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in the Executive Order.

Unfunded Mandates

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

effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: September 30, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, the interim final rule amending 38 CFR part 1, which was published at 72 FR 48239 on August 23, 2007, is adopted as a final rule with the following changes:

PART 1—GENERAL PROVISIONS

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

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

■ 2. In § 1.460, revise the definitions for ''Near death'' and ''Procurement organization'' in alphabetical order to read as follows:

§ 1.460 Definitions.

* * * * *

Near death. The term ''near death'' means that in the clinical judgment of the patient's health care provider based on defined clinical triggers, the patient's death is imminent.

* * * * *

Procurement organization. The term ''procurement organization'' means an organ procurement organization, eye bank, and/or tissue bank as defined in this section.

* * * * *

■ 3. Revise § 1.485a(d), to read as follows:

§ 1.485a Eye, organ and tissue donation.

* * * * *

(d) The VHA health care facility has confirmed with HHS that it has certified or recertified the organ procurement organization as provided in the applicable HHS regulations. VA medical centers must verify annually in January of each calendar year with the Food and Drug Administration (FDA) that an eye bank or tissue bank has complied with the FDA registration requirements of 21 CFR part 1271 and that the registration status is active before permitting an eye bank or tissue bank to receive protected health information.

(Authority: 38 U.S.C. 5701(k), 7332(b)(2)(E))

■ 4. Revise § 1.514b(d), to read as follows:

§ 1.514b Disclosures to procurement organizations.

* * * * *

(d) The VHA health care facility has confirmed with HHS that it has certified or recertified the organ procurement organization as provided in the applicable HHS regulations. VA medical centers must verify annually in January of each calendar year with FDA that an eye bank or tissue bank has complied with the FDA registration requirements of 21 CFR Part 1271 and that the registration status is active before permitting an eye bank or tissue bank to receive protected health information.

(Authority: 38 U.S.C. 5701(k), 7332(b)(2)(E))

[FR Doc. E8–26172 Filed 10–31–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AM59

Elimination of Co-Payment for Weight Management Counseling

AGENCY: Department of Veterans Affairs.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Department of Veterans Affairs (VA) published a direct final rule amending our medical regulations to designate weight management counseling (individual and group sessions) as a service that is not subject to VA's co-payment requirements. VA received no significant adverse comments concerning this rule or its companion substantially identical proposed rule published on the same date. This document confirms that the direct final rule became effective on June 16, 2008. In a companion document in this issue of the **Federal Register**, we are withdrawing as unnecessary that proposed rule.

DATES: *Effective date:* June 16, 2008.

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Director, Business Policy, Chief Business Office (16), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1591 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a direct final rule published in the **Federal Register** on April 16, 2008 (73 FR 20530), VA amended the medical regulations set forth at 38 CFR part 17 to eliminate co-payments for weight management counseling (individual and group sessions). VA published a companion substantially identical proposed rule (RIN 2900–AM81; 73 FR 20579) on the same date to serve as a proposal for the provisions in the direct final rule in case significant adverse comments were received. The direct final rule and proposed rule each provided a 30-day comment period that ended May 16, 2008. No adverse comments were received. Two public comments were received, both of which supported the proposed rule.

Under the direct final rule procedures that we described in those documents, because no significant adverse comment was received within the comment period, the regulation became effective on the date specified in the direct final rule, June 16, 2008. In a companion document in this issue of the **Federal Register**, VA is withdrawing the proposed rule (RIN 2900–AM81) published at 73 FR 20579 as unnecessary.

Approved: October 27, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E8–26177 Filed 10–31–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AM45

Increase in Rates Payable Under the Montgomery GI Bill—Active Duty and Other Miscellaneous Issues

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends regulations governing education programs the Department of Veterans Affairs (VA) administers. In accordance with statutory requirements and previously established formulas, it amends the regulations to show increases in the monthly rates of basic educational assistance payable under the Montgomery GI Bill—Active Duty program, an increase in the percentage

payable to veterans pursuing apprenticeship or other on-job training, and a change in the formula used to calculate the entitlement charge for individuals pursuing apprenticeship or other on-job training. It also amends procedural provisions and delegations of authority regarding continuation of payments during emergency school closings. Furthermore, this document makes nonsubstantive technical changes for purposes of clarity and to remove obsolete provisions.

DATES: *Effective Date:* This final rule is effective November 3, 2008.

Applicability Dates: Certain amendments in this final rule are applied retroactively to conform to statutory requirements. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brandye R. Terrell, Regulation Development Team Leader, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 461–9822.

SUPPLEMENTARY INFORMATION:

I. Increase in Montgomery GI Bill—Active Duty Program Monthly Rates

This document reflects changes made under a formula mandated by 38 U.S.C. 3015(h). Under this formula, the full-time rates of basic educational assistance payable to students under the Montgomery GI Bill—Active Duty (MGIB) program were required to be increased by the percentage by which the total monthly Consumer Price Index—W, for the 12-month period ending on June 30th preceding the fiscal year during which the increase is applicable, exceeds the Consumer Price Index—W for the 12-month period ending on June 30th preceding the previous fiscal year. Using this formula, VA calculated a 3 percent increase for fiscal year (FY) 2006 (October 1, 2005, through September 30, 2006), a 4 percent increase for FY 2007 (October 1, 2006, through September 30, 2007), and a 2.5 percent increase for the period in FY 2008 prior to August 1, 2008 (October 1, 2007, through July 31, 2008), the effective date of section 5004 of Public Law 110–252 (122 Stat. 2379). The full-time basic educational assistance rates in this document reflect increases in accordance with the aforementioned statutory formula.

It should be noted that the aforementioned increases do not affect all educational assistance payable under the MGIB. The increases apply only to the basic educational assistance rate. The increases do not apply to additional amounts payable by the Secretary of Defense to individuals with skills or a specialty in which there is a critical shortage of personnel (also known as ''kickers''). Also, veterans who previously had eligibility under the Veterans' Educational Assistance Program (Vietnam Era GI Bill) receive monthly payments that are in part based upon basic educational assistance and in part based upon the rates payable under the Vietnam Era GI Bill. Only that portion attributable to basic educational assistance is increased. In addition, the increases do not apply to additional amounts payable for dependents.

The provisions of 38 U.S.C. 3015(a) and (b) require that VA pay part-time students at appropriately reduced rates. Since the first student became eligible for assistance under the MGIB in 1985, VA has paid three-quarter-time students and one-half-time students at 75 percent and 50 percent of the full-time institutional rate, respectively. Students pursuing a program of education at less than one-half but more than one-quarter time have had their payments limited to the prorated amount of tuition and fees not to exceed 50 percent of the full-time institutional rate. Similarly, students pursuing a program of education at one-quarter time or less have had their payments limited to the prorated amount of tuition and fees not to exceed 25 percent of the full-time institutional rate. Changes are made consistent with the authority and formula described in this paragraph.

The changes in §§ 21.7136 and 21.7137 in the MGIB monthly rates are applied retroactively to conform to statutory requirements, in accordance with the applicable statutory provisions discussed above. VA began paying the increased rates for FY 2006, FY 2007, and FY 2008 through July 31, 2008, effective for training pursued on or after October 1, 2005, October 1, 2006, and October 1, 2007, through July 31, 2008, respectively.

II. Increase in the Percentage Payable and Modification of the Formula Used To Calculate Entitlement Charge for Veterans Pursuing Apprenticeship or Other On-Job Training

The provisions of 38 U.S.C. 3032(c) require that veterans pursuing a full-time program of apprenticeship or other on-job training be paid a percentage of the basic educational assistance full-time monthly rate. Benefits for the first six months of training, the second six months of training, and the remainder of the program, are ordinarily payable under section 3032 at 75 percent, 55 percent, and 35 percent, respectively. However, the Veterans Benefits Improvement Act of 2004 (Pub. L. 108–454) temporarily increased the percentages payable for apprenticeship and other on-job training from 75 percent, 55 percent, and 35 percent to 85 percent, 65 percent, and 45 percent, respectively, after September 30, 2005, and before January 1, 2008. This final rule makes changes in §§ 21.7136(b)(2)(i) through (b)(2)(iii), (c)(2)(i) through (c)(2)(iii), (d)(4) through (d)(6), (f)(4), and (h)(2), and 21.7137(a)(2), consistent with the authority and formula described in this paragraph.

The Veterans Benefits Improvement Act of 2004 also modified the formula used to calculate entitlement charges for certain apprenticeship and other on-job trainees. Prior to October 1, 2005, veterans with 38 U.S.C. chapter 34 entitlement were charged a month of entitlement for each month they received educational assistance. The entitlement charge was based on the length of training rather than the amount received for training. The Veterans Benefits Improvement Act of 2004 mandated that chapter 34 entitlement charged for training pursued on or after October 1, 2005, be reduced proportionately by the percentage rate (rounded to the nearest percentage) determined by dividing the amount of the training assistance paid for the month by the monthly educational assistance payable for full-time enrollment in an educational institution. This final rule makes changes in § 21.7076(b)(4) consistent with the authority and formula described in this paragraph, applicable to training pursued on or after October 1, 2005.

VA began paying the increased percentages for veterans pursuing apprenticeship and other on-job training and using the aforementioned formula to calculate entitlement charge for training pursued on or after October 1, 2005, in accordance with the statutory provisions listed above.

This final rule also makes nonsubstantive changes in the 38 U.S.C. chapter 34 entitlement provisions intended to clarify that entitlement charges are charges for record purposes and not monetary charges.

III. Changes in § 21.4138 To Amend Delegations of Authority, Reflect Current Agency Organization, and Make Clarifying Changes; Authority for Continuation of Payment of Educational Assistance During Temporary School Closings

Our regulations prior to the changes made by this document granted the Director of the VA facility of jurisdiction for a school or schools affected by an emergency situation the authority to determine, applying the standards under § 21.4138(f), whether educational assistance is payable for breaks, including intervals between terms. In this document, we are amending those and other provisions in § 21.4138, Certifications and release of payments, to make changes in delegations of authority, reflect current agency organization, and make clarifying changes. Among the changes to reflect current agency organization, we use in § 21.4138(f) and in this preamble the term ''VA Regional Processing Office of jurisdiction'' rather than ''VA facility of jurisdiction''. Among the clarifying changes in § 21.4138(f), we change its heading to ''Payments for intervals and temporary school closings'' to better reflect its scope and similarly make changes in the text of § 21.4138(f) to better reflect the scope of its provisions, define *interval,* reorganize its provisions, and add headings within § 21.4138(f).

When hurricanes cause emergency school closings in the jurisdiction of more than one VA Regional Processing Office, it is possible for the director of each VA Regional Processing Office to make a different decision as to continuation of payments. In order to provide prompt and consistent emergency instructions to all offices, we are amending § 21.4138(f) to elevate to the Director, Education Service, VA Central Office, the authority to determine whether to continue payments during school closings when the reasons for the closings cause schools under the jurisdiction of more than one VA Regional Processing Office to close. The Director of the VA Regional Processing Office of jurisdiction will retain the authority to determine if payments may be continued for school closings that only affect schools within that Director's jurisdiction. The regulations do not authorize payment if in the judgment of the Director with jurisdiction the school closing will not be temporary.

Under current § 21.4138(f), the Director of the VA Regional Processing Office of jurisdiction has authority to continue payments during a temporary closing caused by a strike by the faculty or staff of a school that does not exceed 30 days. After that authorization for payment, the Director, Education Service, has authority to determine whether to continue payments if the closing lasts more than 30 days. We are amending § 21.4138(f) to clarify that their respective authority to continue payments during a strike that results in a school closure applies regardless of whether or not the school's faculty or staff are on strike.

If a school disagrees with a determination of whether to authorize payments for the period of a school closure, an opportunity for a review by the Director, Education Service, is provided by current § 21.4138(f)(2)(i)(B). Our amendments to § 21.4138 add, in § 21.4138(f)(6)(ii), a delegation of authority to the Under Secretary for Benefits to review initial decisions as to continuation of payments made by the Director, Education Service.

IV. Miscellaneous Nonsubstantive Technical Changes for Purposes of Clarity and To Remove Obsolete Provisions

In 1996, VA amended 38 CFR 21.7136 by renumbering paragraphs (a) through (e) as paragraphs (b) through (f), respectively. The amendments to § 21.7136 were published February 22, 1996, in the **Federal Register** (61 FR 6780, 6788–6789). In that final rule, we neglected to update the references within newly-redesignated paragraph (f) from paragraph (e) to (f). We are amending § 21.7136(f) in this document to update the incorrect reference citations.

In 1996, VA removed 38 CFR 21.4205 governing absences, in a final rule published May 24, 1996, in the **Federal Register** (61 FR 26107–26117). In that final rule, we neglected to remove the references to § 21.4205 in §§ 21.4200(o) and 21.7140(d). This rule updates those two paragraphs as needed to reflect changes in our regulations.

In 2000, VA amended 38 CFR 21.7045, adding paragraph (d). The final rule was published February 7, 2000, in the **Federal Register** (65 FR 5785–5788). In that final rule, we neglected to update the introductory paragraph of § 21.7136(f) to include a reference to § 21.7045(d), which concerns alternative eligibility requirements for persons with eligibility under 38 U.S.C. chapter 32 to qualify for eligibility under 38 U.S.C. chapter 30. In 2003, we amended § 21.7045 to add paragraph (e), which includes additional alternative eligibility requirements for persons eligible under 38 U.S.C chapter 32 to qualify for eligibility under 38 U.S.C. chapter 30. That final rule was published June 9, 2003, in the **Federal Register** (68 FR 34326–34332). In that final rule, we updated the introductory paragraph of § 21.7136(f) to add a reference to § 21.7045(e)(2), but we should have referred also to § 21.7045(d) and all of paragraph (e). This document makes that necessary amendment to the introductory paragraph of § 21.7136(f).

In the same 2003 final rule, we amended 38 CFR 21.4138(f), ''Payment for intervals between terms.'' The **SUPPLEMENTARY INFORMATION** section of that final rule stated that changes made in that rule to § 21.4138(f) are applicable to MGIB, Survivors' and Dependents' Educational Assistance Program, Veterans Educational Assistance Program, and Montgomery GI Bill—Selected Reserve benefits and said that it would be applicable to the MGIB under § 21.7140 (66 FR at 34327). In that final rule, we neglected to amend § 21.7140. Changes were needed to assure that the amended provisions in § 21.4138(f) would be clearly applicable to MGIB benefits. This document amends § 21.7140(d) for purposes of clarity, to remove redundant provisions, to conform with § 21.4138(f) and, as we discuss above with respect to its obsolete citation of § 21.4205, to reflect changes in our regulations.

In 2006, VA amended § 21.7139, in a final rule published December 18, 2006, in the **Federal Register** (71 FR 75672, 74678–75679). We erroneously referred in § 21.7139(f)(I)(i) to § 21.7136(b)(5) through (b)(8) and (c)(5) through (c)(8) and to § 21.7137(a)(5) through (a)(8), which our regulations did not then contain. We had intended instead to refer to § 21.7136(b)(2) and (c)(2) and to § 21.7137(a)(2). This document revises § 21.7139(f)(1)(i) to reflect the appropriate cross-references in conformance with this document's changes to §§ 21.7136 and 21.7137. Those are the same references that have been appropriate since December 18, 2006.

Administrative Procedure Act

The changes made by this final rule merely are procedural rules, interpretive rules, nonsubstantive changes, or matters of agency organization and management, or they reflect statutory requirements and adjustments made based on previously established formulas. These changes are exempt from the notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553(b) and (d).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits

of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In 38 CFR 21.4138(f)(6), there are provisions for a school disagreeing with VA's decision as to continuation of payments of educational assistance for periods of emergency closings to request an administrative review in writing. However, those provisions do not constitute a collection of information under the Act because they concern information collected from fewer than 10 persons annually. VA has received no such requests since at least 1993.

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule, because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. While some of its provisions in § 21.4138(f)(6) as to emergency school closings may affect small entities, any effect on small entities would be minuscule. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in 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 year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this final rule are 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; and 64.124, All-Volunteer Force Educational Assistance. This final rule also affects the Montgomery GI Bill—Selective Reserve program, for which there is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 27, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons stated above, the Department of Veterans Affairs amends 38 CFR part 21 (subparts D, K, and L) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

■ 1. Revise the authority citation for part 21, subpart D to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, and as noted in specific sections.

■ 2. Amend § 21.4138 by:

■ a. Adding introductory text.

■ b. In paragraph (a)(1)(iv), removing ''field facility'' and adding, in its place, ''Regional Processing Office''.

■ c. In paragraph (a)(4) introductory text, removing ''field station'' and adding, in its place, ''Regional Processing Office''.

■ d. Revising paragraph (f).

The addition and revision read as follows:

§ 21.4138 Certifications and release of payments.

For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational assistance allowance claims processed under 38 U.S.C. chapter 35 for educational institutions located in the Philippines.

* * * * *

(f) *Payment for intervals and temporary school closings.* VA may authorize payment for an interval or for a temporary school closing that occurs within a certified enrollment period. If a school closing that is or may be temporary occurs during an interval, VA will apply any applicable provisions in paragraphs (f)(1) through (f)(5) of this section concerning intervals and in paragraph (f)(6) of this section concerning temporary school closings. For the purposes of this paragraph, *interval* means a period without instruction between consecutive school terms, quarters, or semesters or a period without instruction between a summer term and a term, quarter, or semester. (See definitions of divisions of the school year in § 21.4200(b).)

(1) *Payment for intervals.* In determining whether a student will be paid for an interval, VA will first review the provisions of paragraph (f)(2) of this section. If none of the provisions apply, VA will review the provisions of paragraphs (f)(3), (f)(4), and (f)(5) of this section to determine if payments may be made for the interval. In determining the length of a summer term, VA will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

(2) *Restrictions on payment for intervals.* VA will make no payment for an interval if:

(i) The student is training at less than the half-time rate on the last day of training during the term, quarter, semester, or summer term preceding the interval;

(ii) The student is on active duty;

(iii) The student requests, prior to authorization of an award or prior to negotiating the check, that no benefits be paid for the interval period;

(iv) The student's entitlement applicable to such payment will be exhausted by receipt of such payment, and it is to the advantage of the student not to receive payment;

(v) The interval occurs between school years at a school that is not organized on a term, quarter, or semester basis,

(vi) The student withdraws from all courses in the term, quarter, semester, or summer session preceding the interval, or discontinues training before the scheduled start of an interval in a school not organized on a term, quarter, or semester basis; or

(vii) The student receives an accelerated payment for the term, quarter, semester, or summer session preceding the interval.

(3) *Payment for interval between periods of enrollment at different schools.* If the student transfers from one approved school for the purpose of enrolling in and pursuing a similar course at the second school, VA may make payments for an interval that does not exceed 30 days. If the student does not enroll in a similar course at the second school, VA may not make payments for the interval.

(4) *Payment for intervals that occur at the same school.* (i) If the student remains enrolled at the same school, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(A) Semesters or quarters,

(B) A semester or quarter and a term that is at least as long as the interval,

(C) A semester or quarter and a summer term that is at least as long as the interval,

(D) Consecutive terms (other than semesters or quarters) provided that both terms are at least as long as the interval, or

(E) A term and summer term provided that both the term and the summer term are at least as long as the interval.

(ii) If the student remains enrolled at the same school, VA may make payment for an interval that does not exceed 30 days and that occurs between summer sessions within a summer term.

(Authority: 38 U.S.C. 3680)

(5) *Payment for intervals that occur between overlapping enrollments.* (i) If a student is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), VA will determine whether the student is entitled to payment for the interval between the overlapping enrollment periods, and what dates the interval and enrollment periods will be considered to begin and end, as follows:

(A) By treating the ending date of each enrollment period as though it were the student's last date of training before the interval,

(B) By treating the beginning date of each enrollment period as though it were the student's first date of training after the interval,

(C) By examining the interval payment that would be made to the student on the basis of the various combinations of beginning and ending dates, and

(D) By choosing the ending date and beginning date that result in the highest payment rate as the start and finish of the interval for VA measurement purposes.

(ii) VA will not reduce the interval rate of payment as a result of training the student may take during the interval, but VA will increase the interval rate of payment if warranted by such training.

(Authority: 38 U.S.C. 3680(a))

(6) *Payment for temporary school closings.* VA may authorize payment for temporary school closings that are due to emergencies (including strikes) or established policy based upon an Executive Order of the President. If a school closing that is or may be temporary occurs in whole or in part during an interval, VA will first review the provisions of paragraphs (f)(2) through (f)(5) of this section to determine if payment may be continued during the interval.

(i) If payment would not be inconsistent with the provisions of paragraphs (f)(2) through (f)(5) of this section, a determination to authorize payment for a period of a temporary school closing, or to not authorize payment if, in the judgment of the VA official specified in this paragraph, either the school closing will not be temporary or payment would not otherwise be in accord with this section, or both, will be made by:

(A) The Director of the VA Regional Processing Office of jurisdiction if:

(*1*) The reason for the school closing does not result in the closing of a school or schools in the jurisdiction of the Director of another VA Regional Processing Office, and

(*2*) If the reason for the closing is a strike, the strike has lasted 30 days or less and is not anticipated to last more than 30 days.

(B) The Director, Education Service if:

(*1*) The reason for the school closing results in the closing of schools in the jurisdiction of more than one Director of a VA Regional Processing Office, or

(*2*) The reason for the closing is a strike and the strike lasts, or is anticipated to last, more than 30 days.

(ii) A school that disagrees with a decision made under paragraph (f)(6) of this section may request an administrative review. The review request must be submitted in writing and received by the Director of the VA Regional Processing Office of jurisdiction within one year of the date of VA's letter notifying the school of the decision. A review of the decision will include the evidence of record and any other pertinent evidence the school may wish to submit. The affirmation or reversal of the initial decision based on an administrative review is final. The review will be conducted by the—

(A) Director, Education Service, if the Director of the VA Regional Processing Office of jurisdiction made the initial decision to continue or discontinue payments.

(B) Under Secretary for Benefits, if the Director, Education Service, made the initial decision to continue or discontinue payments.

(Authority: 38 U.S.C. 512, 3680(a))

* * * * *

§ 21.4200 [Amended]

■ 3. Amend § 21.4200(o)(2) by removing ''under § 21.4205 for payment during a holiday vacation'' and adding, in its place, ''for payment but whose work is interrupted by a holiday vacation as defined in § 21.7020(b)(16),''.

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 4. Revise the authority citation for part 21, subpart K, to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

■ 5. Amend § 21.7076 by:

■ a. In paragraph (b)(3) introductory text, adding ''38 U.S.C.'' immediately preceding ''chapter 30''.

■ b. Revising paragraph (b)(4).

The revision reads as follows:

§ 21.7076 Entitlement charges.

* * * * *

(b) * * *

(4) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, including any month in which the veteran fails to complete 120 hours of training, VA will make a record-purpose charge against 38 U.S.C. chapter 34 entitlement, if any, as follows:

(i) For training that occurs before October 1, 2005, VA will reduce 38 U.S.C. chapter 34 entitlement by one month for each month of benefits paid.

(ii) For training that occurs on or after October 1, 2005, VA will reduce 38 U.S.C. chapter 34 entitlement proportionately based on the percentage rate (rounded to the nearest percentage) determined by dividing the amount of the training assistance paid for the month by the monthly educational assistance payable for full-time enrollment in an educational institution.

(Authority: 38 U.S.C. 3015(e), 3032(c), 3687; sec. 102, Pub. L. 108–454, 118 Stat. 3600)

* * * * *

■ 6. Amend § 21.7136 by:

■ a. Revising paragraphs (b), (c)(1), (c)(2), (c)(3), (d)(4), (d)(5), (d)(6), (f)(4), and (h)(2); and revising the authority citation immediately following paragraph (h)(3).

■ b. In paragraph (f) introductory text, removing ''or (e)(2)'' and adding, in its place, ''(d), or (e)''.

■ c. In paragraph (f)(2), removing ''(e)(2)(i)'' each place that it appears, and adding, in its place, ''(f)(2)(i)'' and in paragraph (f)(2)(i) removing ''(e)(1)'' and adding, in its place ''(f)(1)''.

■ d. In paragraph (f)(3), removing ''(e)(2)(i)'' and adding, in its place, ''(f)(2)(i)''.

The revisions read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(b) *Rates.* (1) Except as elsewhere provided in this section or in § 21.7139, basic educational assistance is payable to a veteran whose service is described in paragraph (a) of this section at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training	Monthly rate
Full time	$1034.00
¾ time	775.50
½ time	517.00
Less than ½ but more than ¼ time	517.00
¼ time	258.50

(Authority: 38 U.S.C. 3015)

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training	Monthly rate
Full time	$1075.00
¾ time	806.25
½ time	537.50
Less than ½ but more than ¼ time	537.50
¼ time	268.75

(Authority: 38 U.S.C. 3015)

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

Training	Monthly rate
Full time	$1101.00
¾ time	825.75
½ time	550.50
Less than ½ but more than ¼ time	550.50
¼ time	275.25

(Authority: 38 U.S.C. 3015)

(2) If a veteran's service is described in paragraph (a) of this section, basic educational assistance is payable to the veteran for pursuit of apprenticeship or other on-job training at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training period	Monthly rate
First six months of training	$878.90
Second six months of training	672.10
Remaining pursuit of training	465.30

(Authority: 38 U.S.C. 3015, 3032(c))

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training period	Monthly rate
First six months of training	$913.75
Second six months of training	698.75
Remaining pursuit of training	483.75

(Authority: 38 U.S.C. 3015, 3032(c))

(iii) For training that occurs after September 30, 2007, and before January 1, 2008:

Training period	Monthly rate
First six months of training	$935.85
Second six months of training	715.65
Remaining pursuit of training	495.45

(Authority: 38 U.S.C. 3015, 3032(c))

(iv) For training that occurs after December 31, 2007, and before August 1, 2008:

Training period	Monthly rate
First six months of training	$825.75
Second six months of training	605.55
Remaining pursuit of training	385.35

(Authority: 38 U.S.C. 3015, 3032(c))

(3) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of a cooperative course is—

(i) $1034.00 for training that occurs after September 30, 2005, and before October 1, 2006;

(ii) $1075.00 for training that occurs after September 30, 2006, and before October 1, 2007; and

(iii) $1101.00 for training that occurs after September 30, 2007, and before August 1, 2008.

(Authority: 38 U.S.C. 3015)

(c) * * *

(1) Except as elsewhere provided in this section or in § 21.7139, basic educational assistance is payable to a veteran at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training period	Monthly rate
Full time	$840.00
¾ time	630.00
½ time	420.00
Less than ½ but more than ¼ time	420.00
¼ time or less	210.00

(Authority: 38 U.S.C. 3015)

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training period	Monthly rate
Full time	$873.00
¾ time	654.75
½ time	436.50
Less than ½ but more than ¼ time	436.50
¼ time or less	218.25

(Authority: 38 U.S.C. 3015)

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

Training period	Monthly rate
Full time	$894.00
¾ time	670.50
½ time	447.00
Less than ½ but more than ¼ time	447.00

Training period	Monthly rate
¼ time or less	223.50

(Authority: 38 U.S.C. 3015)

(2) Basic educational assistance is payable to a veteran for pursuit of apprenticeship or other on-job training at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training period	Monthly rate
First six months of training	$714.00
Second six months of training	546.00
Remaining pursuit of training	378.00

(Authority: 38 U.S.C. 3015, 3032(c))

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training period	Monthly rate
First six months of training	$742.05
Second six months of training	567.45
Remaining pursuit of training	392.85

(Authority: 38 U.S.C. 3015, 3032(c))

(iii) For training that occurs after September 30, 2007, and before January 1, 2008:

Training period	Monthly rate
First six months of training	$759.90
Second six months of training	581.10
Remaining pursuit of training	402.30

(Authority: 38 U.S.C. 3015, 3032(c))

(iv) For training that occurs after December 31, 2007, and before August 1, 2008:

Training period	Monthly rate
First six months of training	$670.50
Second six months of training	491.70
Remaining pursuit of training	312.90

(Authority: 38 U.S.C. 3015, 3032(c))

(3) The monthly rate of basic educational assistance payable to a veteran for pursuit of a cooperative course is

(i) $840.00 for training that occurs after September 30, 2005, and before October 1, 2006;

(ii) $873.00 for training that occurs after September 30, 2006, and before October 1, 2007; and

(iii) $894.00 for training that occurs after September 30, 2007, and before August 1, 2008.

(Authority: 38 U.S.C. 3015)

* * * * *

(d) * * *

(4) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing an apprenticeship or other on-job training, the increase may not exceed the rates shown below:

(i) During the first 6 months of training the increase may not exceed $300 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $340 per month.

(ii) During the second 6 months of training the increase may not exceed $220 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $260 per month.

(iii) During the remaining months of training the increase may not exceed $140 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $180 per month.

(5) For individuals who first become members of the Armed Forces during the period beginning November 29, 1989, and ending September 30, 1998, and who are pursuing an apprenticeship or other on-job training, the increase may not exceed the rates shown below:

(i) During the first 6 months of training the increase may not exceed $525 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $595 per month.

(ii) During the second 6 months of training the increase may not exceed $385 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $455 per month.

(iii) During the remaining months of training the increase may not exceed $245 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $315 per month.

(6) For individuals who first become members of the Armed Forces after September 30, 1998, and who are pursuing apprenticeship or other on-job training, the increase may not exceed the rates shown below:

(i) During the first 6 months of training the increase may not exceed $712.50 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $807.50 per month.

(ii) During the second 6 months of training the increase may not exceed $522.50 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $617.50 per month.

(iii) During the remaining months of training the increase may not exceed $332.50 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $427.50 per month.

(Authority: 38 U.S.C. 3015, 3032; sec. 103, Pub. L. 108–454, 118 Stat. 3600)

* * * * *

(f) * * *

(4) For a veteran pursuing a program of apprenticeship or other on-job training—

(i) During periods before October 1, 2005, and after December 31, 2007, VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section—

(A) By.75 for a veteran in the first six months of pursuit of training, (B) By.55 for a veteran in the second six months of pursuit of training, or

(C) By.35 for a veteran in the remaining months of pursuit of training.

(ii) During the period beginning October 1, 2005, and ending December 31, 2007, VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section—

(A) By.85 for a veteran in the first six months of pursuit of training,

(B) By.65 for a veteran in the second six months of pursuit of training, or

(C) By.45 for a veteran in the remaining months of pursuit of training.

(Authority: 38 U.S.C. 3015(e); sec. 103, Pub. L. 108–454, 118 Stat. 3600)

* * * * *

(h) * * *

(2) If a veteran is pursuing apprenticeship or other on-job training—

(i) During periods before October 1, 2005, and after December 31, 2007, VA will increase the veteran's monthly educational assistance that is otherwise payable—

(A) During the first 6 months of pursuit of training, by $3.75 for every $20 the veteran contributed, (B) During the second 6 months of pursuit of training, by $2.75 for every $20 the veteran contributed, or

(C) During the remaining months of the veteran's pursuit of training, by

$1.75 for every $20 the veteran contributed.

(ii) During the period beginning October 1, 2005, and ending December 31, 2007, VA will increase the veteran's monthly educational assistance that is otherwise payable—

(A) During the first 6 months of pursuit of training, by $4.25 for every $20 the veteran contributed,

(B) During the second 6 months of pursuit of training, by $3.25 for every $20 the veteran contributed, or

(C) During the remaining months of the veteran's pursuit of training, by $2.25 for every $20 the veteran contributed.

* * * * *

(3) * * *

(Authority: 38 U.S.C. 3015(g); sec. 103, Pub. L. 108–454, 118 Stat. 3600)

* * * * *

■ 7. Amend § 21.7137 by revising paragraphs (a) and (c) to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. chapter 34.

(a) *Minimum rates.* (1) Except as elsewhere provided in this section, basic educational assistance is payable to individuals with remaining entitlement under 38 U.S.C. chapter 34 at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$1222.00	$1258.00	$1289.00	$16.00
¾ time	917.00	943.50	967.00	12.00
½ time	611.00	629.00	644.50	8.50
Less than ½ but more than ¼ time	611.00	611.00	611.00	0
¼ time or less	305.50	305.50	305.50	0

(Authority: 38 U.S.C. 3015)

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$1263.00	$1299.00	$1330.00	$16.00
¾ time	947.75	974.25	997.75	12.00
½ time	631.50	649.50	665.00	8.50
Less than ½ but more than ¼ time	631.50	631.50	631.50	0
¼ time or less	315.75	315.75	315.75	0

(Authority: 38 U.S.C. 3015)

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$1289.00	$1325.00	$1356.00	$16.00
¾ time	967.25	993.75	1017.25	12.00
½ time	644.50	662.50	678.00	8.50
Less than ½ but more than ¼ time	644.50	644.50	644.50	0
¼ time or less	322.25	322.25	322.25	0

(Authority: 38 U.S.C. 3015)

(2) For veterans pursuing apprenticeship or other on-job training, basic educational assistance is payable for training at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$995.35	$1009.38	$1021.70	$5.95
2nd six months of pursuit of program	738.73	749.78	758.88	4.55
3rd six months of pursuit of program	495.90	503.78	509.85	3.15
Remaining pursuit of program	480.60	488.03	494.78	3.15

(Authority: 38 U.S.C. 3015)

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$1030.20	$1044.23	$1056.55	$5.95
2nd six months of pursuit of program	765.38	776.43	785.53	4.55
3rd six months of pursuit of program	514.35	522.23	528.30	3.15
Remaining pursuit of program	499.05	506.48	513.23	3.15

(Authority: 38 U.S.C. 3015)

(iii) For training that occurs after September 30, 2007 and before January 1, 2008:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$1052.30	$1066.33	$1078.65	$5.95
2nd six months of pursuit of program	782.28	793.33	802.43	4.55
3rd six months of pursuit of program	526.05	533.93	540.00	3.15
Remaining pursuit of program	510.75	518.18	524.93	3.15

(Authority: 38 U.S.C. 3015)

(iv) For training that occurs after December 31, 2007, and before August 1, 2008:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$928.50	$940.88	$951.75	$5.25
2nd six months of pursuit of program	661.93	671.28	678.98	3.85
3rd six months of pursuit of program	409.15	415.28	420.00	2.45
Remaining pursuit of program	397.25	403.03	408.28	2.45

(Authority: 38 U.S.C. 3015)

(3) The monthly rate of basic educational assistance payable to a veteran who is pursuing a cooperative course is the rate stated in the following tables:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Monthly rate			
No depend-ents	One depend-ent	Two depend-ents	Additional for each additional depend-ent
$1222.00	$1258.00	$1289.00	$16.00

(Authority: 38 U.S.C. 3015)

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Monthly rate			
No depend-ents	One depend-ent	Two depend-ents	Additional for each additional depend-ent
$1263.00	$1299.00	$1330.00	$16.00

(Authority: 38 U.S.C. 3015)

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

Monthly rate			
No depend-ents	One depend-ent	Two depend-ents	Additional for each additional depend-ent
$1289.00	$1325.00	$1356.00	$16.00

(Authority: 38 U.S.C. 3015)

* * * * *

(c) *Rates for servicemembers.* Except as provided in paragraph (d) of this section, the monthly rate of basic educational assistance for a servicemember may not exceed the lesser of:

(1) The monthly rate stated in paragraph (a) of this section; or

(2) The monthly rate of the cost of the course. If there is no cost for the course, educational assistance is not payable.

(Authority: 38 U.S.C. 3015)

* * * * *

■ 8. Amend § 21.7139 by revising paragraph (f)(1)(i) to read as follows:

§ 21.7139 Conditions which result in reduced rates or no payment.

* * * * *

(f) * * *

(1) * * *

(i) The rates specified in §§ 21.7136(b)(2), (c)(2), (d)(4) through (d)(6), (f)(4), and (h)(2) and 21.7137(a)(2); and

* * * * *

■ 9. Amend § 21.7140 by revising paragraph (d) to read as follows:

§ 21.7140 Certifications and release of payments.

* * * * *

(d) *Payment for intervals and temporary school closings.* In administering 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4138(f) when determining whether an individual is entitled to payment for an interval or temporary school closing.

(Authority: 38 U.S.C. 3034, 3680)

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

■ 10. Revise the authority citation for part 21, subpart L to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36 and as noted in specific sections.

■ 11. Amend § 21.7640 by:

■ a. Revising the heading for paragraph (b).

■ b. In paragraph (b), removing ''a break, including an interval between terms'' and adding, in its place, ''an interval or temporary school closing''.

The revision reads as follows:

§ 21.7640 Release of payments.

* * * * *

(b) *Payment for intervals and temporary school closings.* * * *

* * * * *

[FR Doc. E8–26176 Filed 10–31–08; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R02–OAR–2008–0308; FRL–8731–2]

Outer Continental Shelf Air Regulations Update To Include New Jersey State Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf (OCS) Air Regulations proposed in the **Federal Register** on July 7, 2008. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be promulgated into part 55 and updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources in the State of New Jersey. The intended effect of approving the OCS requirements for the State of New Jersey is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: *Effective Date:* This rule is effective on December 3, 2008.

This incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of December 3, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2008–0308. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007; telephone number: (212) 637–4074; e-mail address: *riva.steven@epa.gov.*

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I. Background Information

Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to the U.S. EPA.

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and State ambient air quality standards (AAQS) and to comply with the provisions of part C of title I of the CAA. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude.

On July 7, 2008 (73 FR 38356), EPA proposed to approve requirements into

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

the OCS Air Regulations pertaining to the State of New Jersey. EPA has evaluated the proposed regulations to ensure that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable rules in effect for onshore sources into part 55. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. Public Comment and EPA Response

EPA's proposed action provided a 30-day public comment period which closed on August 6, 2008. During this period EPA received no comments on the proposed action.

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. In preparing this final rulemaking, EPA identified several typographical errors contained in the list of applicable requirements contained in the proposal. EPA is correcting these in the final rulemaking. These corrections do not add or subtract any requirements that were included in New Jersey's submittal. EPA is approving the proposed actions under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant economic impact on a substantial number of small entities. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the CAA, this action simply incorporates the existing rules in the COA. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, and tribal governments in the aggregate; or to the private sector, of $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's final rule contains no Federal mandates that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. This action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism 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 State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of

section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use voluntary consensus standards (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable laws or otherwise impractical.

The EPA believes that VCS are inapplicable to this section. Today's action does not require the public to perform activities conducive to the use of VCS.

J. 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 this 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 action will be effective December 3, 2008.

K. Petition for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 2, 2009. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 30, 2008.

George Pavlou,

Acting Regional Administrator, Region 2.

■ Title 40, chapter I of the Code of Federal Regulations, is to be amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for Part 55 continues to read as follows:

Authority: Section 328 of the CAA (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by adding new paragraphs (d)(15) and (e)(15) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(d) * * *

(15) New Jersey

(i) 40 CFR part 52, subpart FF.

(ii) [Reserved]

* * * * *

(e) * * *

(15) New Jersey

(i) State Requirements.

(A) State of New Jersey Requirements Applicable to OCS Sources, February 19, 2008

(B) [Reserved]

(ii) Local requirements.

(A) [Reserved]

* * * * *

■ 3. Appendix A to Part 55 is amended by adding an entry for New Jersey in alphabetical order to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

NEW JERSEY

(a) State requirements.

(1) The following State of New Jersey requirements are applicable to OCS Sources, February 19, 2008. New Jersey State Department of Environmental Protection—New Jersey Administrative Code. The following sections of Title 7:

Chapter 27 Subchapter 2—Control and Prohibition of Open Burning (effective 7/15/96)

N.J.A.C. 7:27–2.1. Definitions
N.J.A.C. 7:27–2.2. Open burning for salvage operations
N.J.A.C. 7:27–2.3. Open burning of refuse
N.J.A.C. 7:27–2.4. General provisions
N.J.A.C. 7:27–2.6. Prescribed burning
N.J.A.C. 7:27–2.7. Emergencies
N.J.A.C. 7:27–2.8. Dangerous material
N.J.A.C. 7:27–2.12. Special permit
N.J.A.C. 7:27–2.13. Fees

Chapter 27 Subchapter 3—Control and Prohibition of Smoke from Combustion of Fuel (effective 2/4/02)

N.J.A.C. 7:27–3.1. Definitions

N.J.A.C. 7:27–3.2. Smoke emissions from stationary indirect heat exchangers
N.J.A.C. 7:27–3.3. Smoke emissions from marine installations
N.J.A.C. 7:27–3.4. Smoke emissions from the combustion of fuel in mobile sources
N.J.A.C. 7:27–3.5. Smoke emissions from stationary internal combustion engines and stationary turbine engines
N.J.A.C. 7:27–3.6. Stack test
N.J.A.C. 7:27–3.7. Exceptions

Chapter 27 Subchapter 4—Control and Prohibition of Particles from Combustion of Fuel (effective 2/4/02)

N.J.A.C. 7:27–4.1. Definitions
N.J.A.C. 7:27–4.2. Standards for the emission of particles
N.J.A.C. 7:27–4.3. Performance test principle
N.J.A.C. 7:27–4.4. Emissions tests
N.J.A.C. 7:27–4.6. Exceptions

Chapter 27 Subchapter 5—Prohibition of Air Pollution (effective 7/8/98)

N.J.A.C. 7:27–5.1. Definitions
N.J.A.C. 7:27–5.2. General provisions

Chapter 27 Subchapter 6—Control and Prohibition of Particles from Manufacturing Processes (effective 7/6/98)

N.J.A.C. 7:27–6.1. Definitions
N.J.A.C. 7:27–6.2. Standards for the emission of particles
N.J.A.C. 7:27–6.3. Performance test principles
N.J.A.C. 7:27–6.4. Emission tests
N.J.A.C. 7:27–6.5. Variances
N.J.A.C. 7:27–6.7. Exceptions

Chapter 27 Subchapter 7—Sulfur (effective 7/15/96)

N.J.A.C. 7:27–7.1. Definitions
N.J.A.C. 7:27–7.2. Control and prohibition of air pollution from sulfur compounds

Chapter 27 Subchapter 8—Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit) (effective 2/19/08)

N.J.A.C. 7:27–8.1. Definitions
N.J.A.C. 7:27–8.2. Applicability
N.J.A.C. 7:27–8.3. General provisions
N.J.A.C. 7:27–8.5. Air quality impact analysis
N.J.A.C. 7:27–8.7. Operating certificates
N.J.A.C. 7:27–8.8. General permits
N.J.A.C. 7:27–8.9. Environmental improvement pilot tests
N.J.A.C. 7:27–8.11. Standards for issuing a permit
N.J.A.C. 7:27–8.12. State of the art
N.J.A.C. 7:27–8.13. Conditions of approval
N.J.A.C. 7:27–8.14. Denials
N.J.A.C. 7:27–8.15. Reporting requirements
N.J.A.C. 7:27–8.16. Revocation
N.J.A.C. 7:27–8.17. Changes to existing permits and certificates
N.J.A.C. 7:27–8.18. Permit revisions
N.J.A.C. 7:27–8.19. Compliance plan changes
N.J.A.C. 7:27–8.20. Seven day notice changes
N.J.A.C. 7:27–8.21. Amendments
N.J.A.C. 7:27–8.22. Changes to sources permitted under batch plant, pilot plant, dual plant, or laboratory operations permitting procedures
N.J.A.C. 7:27–8.23. Reconstruction
N.J.A.C. 7:27–8.24. Special provisions for construction but not operation
N.J.A.C. 7:27–8.25. Special provisions for pollution control equipment or pollution prevention process modifications
N.J.A.C. 7:27–8.26. Civil or criminal penalties for failure to comply
N.J.A.C. 7:27–8.27. Special facility-wide permit provisions
N.J.A.C. 7:27–8.28. Delay of testing

Appendix I

Chapter 27 Subchapter 9—Sulfur in Fuels (effective 6/19/06)

N.J.A.C. 7:27–9.1. Definitions
N.J.A.C. 7:27–9.2. Sulfur content standards
N.J.A.C. 7:27–9.3. Exemptions
N.J.A.C. 7:27–9.4. Waiver of air quality modeling
N.J.A.C. 7:27–9.5. Incentive for conversion to coal or other solid fuel

Chapter 27 Subchapter 10—Sulfur in Solid Fuels (effective 6/1/98)

N.J.A.C. 7:27–10.1. Definitions
N.J.A.C. 7:27–10.2. Sulfur contents standards
N.J.A.C. 7:27–10.3. Expansion, reconstruction or construction of solid fuel burning units
N.J.A.C. 7:27–10.4. Exemptions

Chapter 27 Subchapter 11—Incinerators (effective 6/1/98)

N.J.A.C. 7:27–11.1. Definitions
N.J.A.C. 7:27–11.2. Construction standards
N.J.A.C. 7:27–11.3. Emission standards
N.J.A.C. 7:27–11.4. Permit to construct; certificate to operate
N.J.A.C. 7:27–11.5. Operation
N.J.A.C. 7:27–11.6. Exceptions

Chapter 27 Subchapter 12—Prevention and Control of Air Pollution Emergencies (effective 6/1/98)

N.J.A.C. 7:27–12.1. Definitions
N.J.A.C. 7:27–12.2. Emergency criteria
N.J.A.C. 7:27–12.3. Criteria for emergency termination
N.J.A.C. 7:27–12.4. Standby plans
N.J.A.C. 7:27–12.5. Standby orders
Table I Emission Reduction Objectives
Table II Emission Reduction Objectives
Table III Emission Reduction Objectives

Chapter 27 Subchapter 16—Control and Prohibition of Air Pollution by Volatile Organic Compounds (effective 11/19/07)

N.J.A.C. 7:27–16.1. Definitions
N.J.A.C. 7:27–16.1A. Purpose, scope, applicability, and severability
N.J.A.C. 7:27–16.2. Stationary storage tanks
N.J.A.C. 7:27–16.3. Gasoline transfer operations
N.J.A.C. 7:27–16.4. VOC transfer operations, other than gasoline
N.J.A.C. 7:27–16.5. Marine tank vessel loading and ballasting operations
N.J.A.C. 7:27–16.6. Open top tanks and solvent cleaning operations
N.J.A.C. 7:27–16.7. Surface coating and graphic arts operations
N.J.A.C. 7:27–16.8. Boilers
N.J.A.C. 7:27–16.9. Stationary combustion turbines
N.J.A.C. 7:27–16.10. Stationary reciprocating engines
N.J.A.C. 7:27–16.12. Surface coating operations at mobile equipment repair and refinishing facilities
N.J.A.C. 7:27–16.13. Flares
N.J.A.C. 7:27–16.16. Other source operations
N.J.A.C. 7:27–16.17. Facility-specific VOC control requirements
N.J.A.C. 7:27–16.18. Leak detection and repair
N.J.A.C. 7:27–16.19. Application of cutback and emulsified asphalts
N.J.A.C. 7:27–16.21. Natural gas pipelines
N.J.A.C. 7:27–16.22. Emission information, record keeping and testing
N.J.A.C. 7:27–16.23. Procedures for demonstrating compliance
N.J.A.C. 7:27–16.26. Variances
N.J.A.C. 7:27–16.27. Exceptions

APPENDIX I

Chapter 27 Subchapter 18—Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules) (effective 12/6/04)

N.J.A.C. 7:27–18.1. Definitions
N.J.A.C. 7:27–18.2. Facilities subject to this subchapter
N.J.A.C. 7:27–18.3. Standards for issuance of permits
N.J.A.C. 7:27–18.4. Air quality impact analysis
N.J.A.C. 7:27–18.5. Standards for use of emission reductions as emission offsets
N.J.A.C. 7:27–18.6. Emission offset postponement
N.J.A.C. 7:27–18.7. Determination of a net emission increase or a significant net emission increase
N.J.A.C. 7:27–18.8. Banking of emission reductions
N.J.A.C. 7:27–18.9. Secondary emissions
N.J.A.C. 7:27–18.10. Exemptions
N.J.A.C. 7:27–18.12. Civil or criminal penalties for failure to comply

Chapter 27 Subchapter 19—Control and Prohibition of Air Pollution from Oxides of Nitrogen (effective 4/2/07)

N.J.A.C. 7:27–19.1. Definitions
N.J.A.C. 7:27–19.2. Purpose, scope and applicability
N.J.A.C. 7:27–19.3. General provisions
N.J.A.C. 7:27–19.4. Boilers serving electric generating units
N.J.A.C. 7:27–19.5. Stationary combustion turbines
N.J.A.C. 7:27–19.6. Emissions averaging
N.J.A.C. 7:27–19.7. Industrial/commercial/institutional boilers and other indirect heat exchangers
N.J.A.C. 7:27–19.8. Stationary reciprocating engines
N.J.A.C. 7:27–19.11. Emergency generators—recordkeeping
N.J.A.C. 7:27–19.13. Facility-specific NOX emission limits
N.J.A.C. 7:27–19.14. Procedures for obtaining approvals under this subchapter
N.J.A.C. 7:27–19.15. Procedures and deadlines for demonstrating compliance
N.J.A.C. 7:27–19.16. Adjusting combustion processes
N.J.A.C. 7:27–19.17. Source emissions testing
N.J.A.C. 7:27–19.18. Continuous emissions monitoring
N.J.A.C. 7:27–19.19. Recordkeeping and recording
N.J.A.C. 7:27–19.20. Fuel switching

N.J.A.C. 7:27–19.21. Phased compliance—repowering
N.J.A.C. 7:27–19.23. Phased compliance—use of innovative control technology
N.J.A.C. 7:27–19.24. MEG alerts
N.J.A.C. 7:27–19.25. Exemption for emergency use of fuel oil
N.J.A.C. 7:27–19.26. Penalties
N.J.A.C. 7:27–19.27. Use of NO_X budget allowances by a former DER credit user

Chapter 27 Subchapter 20—Used Oil Combustion (effective 6/19/06)

N.J.A.C. 7:27–20.1. Definitions
N.J.A.C. 7:27–20.2. General provisions
N.J.A.C. 7:27–20.3. Burning of on-specification used oil in space heaters covered by a registration
N.J.A.C. 7:27–20.4. Burning of on-specification used oil in space heaters covered by a permit
N.J.A.C. 7:27–20.5. Demonstration that used oil is on-specification
N.J.A.C. 7:27–20.6. Burning of on-specification oil in other combustion units
N.J.A.C. 7:27–20.7. Burning of off-specification used oil
N.J.A.C. 7:27–20.8. Ash standard
N.J.A.C. 7:27–20.9. Exception

Chapter 27 Subchapter 21—Emission Statements (effective 8/4/03)

N.J.A.C. 7:27–21.1. Definitions
N.J.A.C. 7:27–21.2. Applicability
N.J.A.C. 7:27–21.3. General provisions
N.J.A.C. 7:27–21.4. Procedures for submitting an emission statement
N.J.A.C. 7:27–21.5. Required contents of an emission statement
N.J.A.C. 7:27–21.6. Methods to be used for quantifying actual emissions
N.J.A.C. 7:27–21.7. Recordkeeping requirements
N.J.A.C. 7:27–21.8. Certification of information
N.J.A.C. 7:27–21.9. Request for extensions
N.J.A.C. 7:27–21.10. Determination of non-applicability
N.J.A.C. 7:27–21.11. Severability

Chapter 27 Subchapter 22—Operating Permits (effective 11/19/07)

N.J.A.C. 7:27–22.1. Definitions
N.J.A.C. 7:27–22.2. Applicability
N.J.A.C. 7:27–22.3. General provisions
N.J.A.C. 7:27–22.4. General application procedures
N.J.A.C. 7:27–22.5. Application procedures for initial operating permits
N.J.A.C. 7:27–22.6. Operating permit application contents
N.J.A.C. 7:27–22.7. Application shield
N.J.A.C. 7:27–22.8. Air quality simulation modeling and risk assessment
N.J.A.C. 7:27–22.9. Compliance plans
N.J.A.C. 7:27–22.10. Completeness reviews
N.J.A.C. 7:27–22.11. Public comment
N.J.A.C. 7:27–22.12. EPA comment
N.J.A.C. 7:27–22.13. Final action on an application
N.J.A.C. 7:27–22.14. General operating permits
N.J.A.C. 7:27–22.15. Temporary facility operating permits
N.J.A.C. 7:27–22.16. Operating permit contents
N.J.A.C. 7:27–22.17. Permit shield
N.J.A.C. 7:27–22.18. Source emissions testing and monitoring
N.J.A.C. 7:27–22.19. Recordkeeping, reporting and compliance certification
N.J.A.C. 7:27–22.20. Administrative amendments
N.J.A.C. 7:27–22.21. Changes to insignificant source operations
N.J.A.C. 7:27–22.22. Seven-day-notice changes
N.J.A.C. 7:27–22.23. Minor modifications
N.J.A.C. 7:27–22.24. Significant modifications
N.J.A.C. 7:27–22.24A. Reconstruction
N.J.A.C. 7:27–22.25. Department initiated operating permit modifications
N.J.A.C. 7:27–22.26. MACT and GACT standards
N.J.A.C. 7:27–22.27. Operating scenarios
N.J.A.C. 7:27–22.28A. Emissions trading
N.J.A.C. 7:27–22.28B. Facility-specific emissions averaging programs
N.J.A.C. 7:27–22.29. Facilities subject to acid deposition control
N.J.A.C. 7:27–22.30. Renewals
N.J.A.C. 7:27–22.31. Fees
N.J.A.C. 7:27–22.32. Hearings and appeals
N.J.A.C. 7:27–22.33. Preconstruction review
N.J.A.C. 7:27–22.34. Early reduction of HAP emissions
N.J.A.C. 7:27–22.35. Advances in the art of air pollution

APPENDIX

TABLE A

TABLE B

Chapter 27 Subchapter 30—Clean Air Interstate Rule (CAIR) NO_X Trading Program (effective 8/6/07)

N.J.A.C. 7:27–30.1. Purpose and scope
N.J.A.C. 7:27–30.2. Definitions
N.J.A.C. 7:27–30.3. Allocation of CAIR NO_X annual allowances & CAIR NO_X ozone season allowances
N.J.A.C. 7:27–30.4. The compliance supplement pool
N.J.A.C. 7:27–30.5. Claims for incentive allowances
N.J.A.C. 7:27–30.6. Reporting requirements

Chapter 27 Subchapter 31—NO_X Budget Program (effective 8/6/07)

N.J.A.C. 7:27–31.1. Purpose and scope
N.J.A.C. 7:27–31.2. Definitions
N.J.A.C. 7:27–31.3. Applicability and general provisions
N.J.A.C. 7:27–31.4. Opt-in provisions
N.J.A.C. 7:27–31.5. Interface with the emission offset program
N.J.A.C. 7:27–31.6. Use of allowances by former users of DER credits
N.J.A.C. 7:27–31.7. Annual allowance allocation
N.J.A.C. 7:27–31.8. Claims for incentive allowances
N.J.A.C. 7:27–31.9. Permits
N.J.A.C. 7:27–31.10. Allowance use, transfer and retirement
N.J.A.C. 7:27–31.11. Allowance banking
N.J.A.C. 7:27–31.12. Early reductions
N.J.A.C. 7:27–31.13. NO_X allowance tracking system (NATS)
N.J.A.C. 7:27–31.14. Emission monitoring
N.J.A.C. 7:27–31.15. Recordkeeping
N.J.A.C. 7:27–31.16. Reporting
N.J.A.C. 7:27–31.17. End-of-season reconciliation
N.J.A.C. 7:27–31.18. Compliance certification
N.J.A.C. 7:27–31.19. Excess emissions deduction
N.J.A.C. 7:27–31.20. Program audit
N.J.A.C. 7:27–31.21. Guidance documents and sources incorporated by reference

Chapter 27B Subchapter 1—Sampling and Analytical Procedures for Determining Emissions of Particles from Manufacturing Processes and from Combustion of Fuels (effective 9/4/07)

N.J.A.C. 7:27B–1.1. Definitions
N.J.A.C. 7:27B–1.2. Acceptable test methods
N.J.A.C. 7:27B–1.3. Operating conditions during the test
N.J.A.C. 7:27B–1.4. Sampling facilities to be provided by the person responsible for emissions
N.J.A.C. 7:27B–1.5. Sampling train
N.J.A.C. 7:27B–1.6. Performance test principle
N.J.A.C. 7:27B–1.7. General testing requirements
N.J.A.C. 7:27B–1.8. Required test data
N.J.A.C. 7:27B–1.9. Preparation for sampling
N.J.A.C. 7:27B–1.10. Sampling
N.J.A.C. 7:27B–1.11. Sample recovery
N.J.A.C. 7:27B–1.12. Analysis
N.J.A.C. 7:27B–1.13. Calculations
N.J.A.C. 7:27B–1.14. Validation of test

Chapter 27B Subchapter 2—Procedures for the Visual Determination of the Opacity (Percent) and the Shade or Appearance (Ringelmann Number) of Emissions from Sources (effective 6/1/76)

N.J.A.C. 7:27B–2.1. Definitions
N.J.A.C. 7:27B–2.2. Acceptable observation methods
N.J.A.C. 7:27B–2.3. Observation principle
N.J.A.C. 7:27B–2.4. General observation requirements
N.J.A.C. 7:27B–2.5. Required observation data
N.J.A.C. 7:27B–2.6. Certification

Chapter 27B Subchapter 3—Air Test Method 3: Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds from Source Operations (effective 3/1/99)

N.J.A.C. 7:27B–3.1. Definitions
N.J.A.C. 7:27B–3.2. Sampling and analytical protocol: acceptable test methods
N.J.A.C. 7:27B–3.3. Operating conditions during the test
N.J.A.C. 7:27B–3.4. Sampling facilities
N.J.A.C. 7:27B–3.5. Source operations and applicable test methods
N.J.A.C. 7:27B–3.6. Procedures for the determinations of vapor pressures of a single known VOC or mixtures of known and/or unknown VOC
N.J.A.C. 7:27B–3.7. Procedures for the direct measurement of volatile organic compounds using a flame ionization detector (FID), a photoionization detector (PID) or a non-dispersive infrared analyzer (NDIR)
N.J.A.C. 7:27B–3.8. Procedures for the direct measurement of volatile organic compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector

N.J.A.C. 7:27B–3.9. Procedures for the sampling and remote analysis of known volatile organic compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector
N.J.A.C. 7:27B–3.10. Procedures for the determination of volatile organic compounds in surface coating formulations
N.J.A.C. 7:27B–3.11. Procedures for the determination of volatile organic compounds emitted from transfer operations using a flame ionization detector (FID) or non-dispersive infrared analyzer (NDIR)
N.J.A.C. 7:27B–3.12. Procedures for the determination of volatile organic compounds in cutback and emulsified asphalts
N.J.A.C. 7:27B–3.13. Procedures for the determination of leak tightness of gasoline delivery vessels
N.J.A.C. 7:27B–3.14. Procedures for the direct detection of fugitive volatile organic compound leaks
N.J.A.C. 7:27B–3.15. Procedures for the direct detection of fugitive volatile organic compound leaks from gasoline tank trucks and vapor collection systems using a combustible gas detector
N.J.A.C. 7:27B–3.18. Test methods and sources incorporated by reference

REFERENCE

APPENDIX 1

APPENDIX 3

* * * * *

[FR Doc. E8–26022 Filed 10–31–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA97

Natural Resource Damages for Hazardous Substances

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule; correction.

SUMMARY: The Department of the Interior is correcting a final rule that appeared in the **Federal Register** on October 2, 2008 (73 FR 57259). The document issued a final rule that will regulate restoring, replacing, or acquiring the equivalent of public natural resources that are injured or destroyed as a result of releases of hazardous substances

DATES: *Effective Date:* November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Frank DeLuise, 1849 C Street, NW., Washington, DC 20240. Telephone: 202–208–4143.

SUPPLEMENTARY INFORMATION: In FR Doc. E8–23225 appearing on page 57259 in the **Federal Register** of Thursday, October 2, 2008, the following correction is made:

1. On page 57266, in the second column, amendment 6, the instruction ''In § 11.82, revise paragraphs (a), (b)(1)(iii), and (c) to read as follows:'' is corrected to read, ''In § 11.82, revise paragraphs (a), (b)(1)(iii), and (c)(1) to read as follows:''

Dated: October 30, 2008.

James E. Cason,

Associate Deputy Secretary.

[FR Doc. E8–26248 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS–R9–MB–2008–0090; 91200–1231–9BPP–L2]

RIN 1018–AW19

Migratory Bird Hunting; Hunting Methods for Resident Canada Geese

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or ''we'') is amending the regulations on resident Canada goose management. This final rule clarifies the requirements for use of expanded hunting methods during special September hunting seasons. One requirement in the regulations has been misinterpreted, and we are taking this action to make sure that our regulations are clear for the States and the public.

DATES: This rule is effective on December 3, 2008.

ADDRESSES: You may view comments received on the proposed rule at *http://www.regulations.gov* or you may inspect them during normal business hours at the Service's Division of Migratory Bird Management office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia. You may obtain copies of the Final Environmental Impact Statement (FEIS) on resident Canada goose management from the above address or from the Division of Migratory Bird Management Web site at *http://www.fws.gov/migratorybirds/issues/cangeese/finaleis.htm.*

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, Division of Migratory Bird Management, or Ron Kokel (703) 358–1714 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Authority and Responsibility

Migratory birds are protected under four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada in 1916 as amended in 1999), the United Mexican States (1936 as amended in 1972 and 1999), Japan (1972 as amended in 1974), and the Soviet Union (1978). Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712). The Migratory Bird Treaty Act (Act), which implements the above-mentioned treaties, provides that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means allowing hunting, killing, and other forms of taking of migratory birds, their nests, and eggs is compatible with the conventions. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are Federally protected by the Act by reason of the fact that they are listed as migratory birds in all four treaties. Because Canada geese are covered by all four treaties, regulations must meet the requirements of the most restrictive of the four. For Canada geese, this is the treaty with Canada. All regulations concerning resident Canada geese are compatible with its terms, with particular reference to Articles VII, V, and II.

Each treaty not only permits sport hunting, but permits the take of migratory birds for other reasons, including scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the various Conventions. More specifically, Article VII, Article II (paragraph 3), and Article V of ''The Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States'' provides specific limitations on allowing the take of migratory birds for reasons other than sport hunting. Article VII authorizes permitting the take, kill, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. Article V relates to the taking of nests and eggs, and Article II, paragraph 3, states that, in order to ensure the long-term conservation of

migratory birds, migratory bird populations shall be managed in accord with listed conservation principles.

The other treaties are less restrictive. The treaties with both Japan (Article III, paragraph 1, subparagraph (b)) and the Soviet Union (Article II, paragraph 1, subparagraph (d)) provide specific exceptions to migratory bird take prohibitions for the purpose of protecting persons and property. The treaty with Mexico requires, with regard to migratory game birds, only that there be a ''closed season'' on hunting and that hunting be limited to 4 months in each year.

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are promulgated in title 50, Code of Federal Regulations (CFR), parts 13 and 21, and issued by the Service. The Service annually promulgates regulations governing the take, possession, and transportation of migratory birds under sport hunting seasons in 50 CFR part 20.

Background

On August 10, 2006, we published in the **Federal Register** (71 FR 45964), a final rule establishing regulations in 50 CFR parts 20 and 21 authorizing State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. On August 20, 2007, we published in the **Federal Register** (72 FR 46403), a final rule that clarified and slightly modified several program requirements in 50 CFR parts 20 and 21 regarding eligibility, definitions, methodologies, and dates. On August 6, 2008, we published in the **Federal Register** (73 FR 45689) a proposed rule further seeking to clarify the use of expanded hunting methods during special September hunting seasons. The final rule described here addresses the comments we received on the August 6 proposed rule and amends 50 CFR part 20.

Expanded Hunting Methods During September Special Seasons

One of the components in the resident Canada goose management program is to provide expanded hunting methods and opportunities to increase the sport harvest of resident Canada geese above that which results from existing September special Canada goose seasons. The regulatory changes in § 20.21(b) and (g) codified in the August 10, 2006, and August 20, 2007, final rules provide State wildlife management agencies and Tribal entities the option of authorizing the use of unplugged shotguns (paragraph (b)) and electronic calls (paragraph (g)) during the first portion of existing, operational September Canada goose seasons (i.e., September 1–15, § 20.21(b)(2)(i) and § 20.21(g)(2)(i)). The final rules also stated that utilization of these additional hunting methods during any new special seasons or other existing, operational special seasons (i.e., September 16–30, § 20.21(b)(2)(ii) and § 20.21(g)(2)(ii)) can be approved by the Service and require demonstration of a minimal impact to migrant Canada goose populations. Further, we will authorize these seasons (i.e., those after September 15) on a case-by-case basis through the normal migratory bird hunting regulatory process.

All of these expanded hunting methods and opportunities must be conducted outside of any other open waterfowl season (i.e., when all other waterfowl and crane hunting seasons are closed). Thus, any State listed in § 20.21(b)(2) and (g)(2) may select the use of these expanded hunting methods during September 1–15 without annual Service approval, and during September 16–30 with annual Service approval.

This Rule

We became aware of concerns that, as written, the regulations in § 20.21(b)(2) and (g)(2) do not require annual promulgation in the **Federal Register** of a State's decision to use these expanded hunting methods during the period September 1–15. Language in § 20.21(b)(2)(ii) and (g)(2)(ii) requires that any decision by the States to use these expanded hunting methods during the period of September 16–20 be incorporated in the annual migratory bird hunting regulations. The result is that the States are required to notify us of their decision. Because this same language does not appear in § 20.21(b)(2)(i) and (g)(2)(i), the existing regulations could be interpreted as requiring notification by a State only for the period September 16–20 and not for the period September 1–15. We codify all the other season dates, daily bag limits, area restrictions, shooting hours, etc., annually in late August, so this interpretation of the regulations was clearly not our intention.

Therefore, we are amending § 20.21(b)(2)(i) and (g)(2)(i) by adding the phrase ''when approved in the annual regulatory schedule in subpart K of this part'' to expressly require States to inform us of their annual selections on the use of these expanded hunting methods during the period of September 1–15. This is the same language that currently exists in § 20.21(b)(2)(ii) and (g)(2)(ii) that requires such notification by the States for the period September 16–30. As a result of these amendments, all State selections, or nonselections, of these expanded hunting methods during September would require publication in the annual regulatory schedule in subpart K of part 20.

Public Comments

In the August 6, 2008, proposed rule we solicited comments from the public. The public comment period ended on September 5, 2008. We received one comment. The individual commenter believed that the entire migratory bird hunting regulations process was run by those interested in profit and that the killing of all migratory birds should be eliminated.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. We annually take into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds before we establish hunting seasons. We believe that all such seasons are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. While there are problems inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to streamline and improve the process.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we published the availability of a Draft Environmental Impact Statement (DEIS) on March 7, 2002 (67 FR 10431), followed by a 91-day comment period. We subsequently reopened the comment period for 60 additional days (68 FR 50546, August 21, 2003). On November 18, 2005, both the Service and the Environmental Protection Agency published notices of availability for the FEIS in the **Federal Register** (70 FR 69966 and 70 FR 69985). On August 10,

2006, we published our Record of Decision (ROD) in the **Federal Register** (71 FR 45964). The FEIS is available to the public (see **ADDRESSES**). The changes to the resident Canada goose regulations fall within the scope of the FEIS.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that ''Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' We completed a biological evaluation and informal consultation (both available upon request; see **ADDRESSES**) under section 7 of the ESA for the action described in the August 10 final rule. In the letter of concurrence between the Division of Migratory Bird Management and the Division of Endangered Species, we concluded that the inclusion of specific conservation measures in the final rule satisfied concerns about certain species and that the action was not likely to adversely affect any threatened, endangered, or candidate species. This change falls within the scope of that informal consultation.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for actions that will have a significant economic impact on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. We discussed these impacts in the August 10 final rule. For the reasons detailed in that rule, we have determined that a Regulatory Flexibility Act analysis is not required.

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of $100 million or more; nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act and Information Collection

This rule does not contain any new information collection or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). OMB has approved and assigned control number 1018–0133, which expires on 08/31/2009, to the regulations concerning the control and management of resident Canada geese. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. The purpose of the UMRA is to strengthen the partnership between the Federal Government and State, local, and tribal governments and to end the imposition, in the absence of full consideration by Congress, of Federal mandates on these governments without adequate Federal funding, in a manner that may displace other essential governmental priorities. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this action will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this action is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

We have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Takings Implication Assessment

In accordance with Executive Order 12630, this action, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this action will help alleviate private and public property damage and concerns related to public health and safety and allow the exercise of otherwise unavailable privileges.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the Migratory Bird Treaty Act. While legally this responsibility rests solely with the Federal Government, it is in the best interest of the migratory bird resource for us to work cooperatively with the Flyway Councils and States to develop and implement the various migratory bird management plans and strategies.

The August 10 final rule and this final rule were developed following extensive input from the Flyway Councils, States, and Wildlife Services. Individual Flyway management plans were developed and approved by the four Flyway Councils, and States actively participated in the scoping process for the DEIS. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. The rule allows States the latitude to develop and implement their own resident Canada goose management action plan within the frameworks of the selected

alternative. Therefore, in accordance with Executive Order 13132, this rule does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have determined that this rule has no effects on Federally recognized Indian tribes.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866 and is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we amend part 20 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

■ 2. Revise paragraphs (b)(2) and (g)(2) of § 20.21 to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(b) * * *

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15, when approved in the annual regulatory schedule in subpart K of this part; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

* * * * *

(g) * * *

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15, when approved in the annual regulatory schedule in subpart K of this part; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

* * * * *

Dated: October 16, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–26153 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 0809241260–81401–02]

RIN 0648–XK78

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule.

SUMMARY: NMFS issues this temporary rule for a period of 30 days, to allow shrimp fishermen to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in state and Federal waters off Louisiana from the western end of Timbalier Island (approximately 90° 33' W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54' W. long.), and extending offshore 15 nautical miles. The previous 30–day exemption from TED requirements was effective September 26 through October 26, 2008. This action is necessary because environmental conditions resulting from Hurricanes Gustav and Ike persist on the fishing grounds, preventing some fishermen from using TEDs effectively.

DATES: Effective from October 29, 2008 through November 28, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727–551–5794.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken, and some are killed, as a result of numerous activities, including fishery-related trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see 50 CFR

223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to allow sea turtles to escape. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED – the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, which allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Most approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

The regulations governing sea turtle take prohibitions and exemptions provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 223.206(d)(3)(ii) specify that the NOAA Assistant Administrator for Fisheries (AA) may authorize compliance with tow time restrictions as an alternative to the TED requirement if the AA determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow time limits are authorized as an alternative to the use of TEDs. Each tow may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31, as measured from the time that the trawl doors enter the water until they are removed from the water. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

On September 5 and 15, 2008, the NMFS Southeast Regional Administrator received requests from the Louisiana Department of Wildlife and Fisheries (LDWF) and the Mississippi Department of Marine Resources (MDMR), respectively, to allow the use of tow times as an alternative to TEDs in state and Federal waters because of excessive storm-related debris on the fishing grounds as a result of Hurricanes Gustav and Ike. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles. Phone conversations between NMFS Southeast Region's Protected Resources staff, fishermen, and the states' resource agency staffs confirmed there were problems with debris in state and Federal waters off Louisiana (from the Mississippi/Louisiana boundary to the Texas/Louisiana boundary) extending offshore 20 nautical miles, which were likely to affect the effectiveness of TEDs; discussions between NMFS staff, fishermen, and the states' resource agency staffs, and a survey of Mississippi waters found no significant remaining issues stemming from storm-related debris on the shrimp fishing grounds. Subsequent to these requests, NMFS issued a 30–day exemption to the TED requirements from September 26 through October 26, 2008, for waters off of Louisiana affected by Hurricanes Gustav and Ike (73 FR 57010, October 1, 2008).

On September 29, 2008, the NMFS Southeast Regional Administrator received a request from the Texas Parks and Wildlife Department (TPWD) to allow the use of tow times as an alternative to TEDs in state and federal waters because of excessive storm-related debris on the fishing grounds as a result of Hurricane Ike. Subsequent to this request, NMFS issued a 30–day exemption to the TED requirements from October 8 through November 7, 2008, for waters off of Texas affected by Hurricane Ike (73 FR 60638, October 14, 2008). Specifically, the affected waters extend from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties (approximately 95° 32' W. long.), and offshore 20 nautical miles.

On October 20, 2008, the NMFS Southeast Regional Administrator received a request from the LADWF for an additional 30–day period allowing the use of restricted tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm-related debris that was still present on the fishing grounds as a result of Hurricanes Gustav and Ike. Louisiana has stated that their marine enforcement agents will enforce the tow time restrictions.

Field investigations and interviews conducted by NMFS Gear Technicians and phone conversations between NMFS Southeast Region's Protected Resources staff, fishermen, and state resource agency staff confirm there are problems with debris in state and Federal waters off Louisiana from the western end of Timbalier Island (approximately 90° 33'W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54'W. long.), and extending offshore 15 nautical miles. Investigations conducted by NMFS indicate some shrimp fishermen continue to use TEDs in these areas as the TED is able to exclude debris from the trawl; however, these investigations also indicated there are still significant amounts of large debris that can render TEDs ineffective at releasing turtles. These investigations also indicate that most offshore fishermen are using their TEDs due to the fact the debris offshore is of a nature and size that the TEDs can ''shoot'' the debris from the trawl.

Special Environmental Conditions

The AA finds that debris washed into hurricane-affected state and Federal waters off Louisiana from the western end of Timbalier Island (approximately 90° 33' W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54' W. long.), and extending offshore 15 nautical miles, has created special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of restricted tow times as an alternative to the use of TEDs in state and Federal waters off Louisiana from the western end of Timbalier Island (approximately 90° 33' W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54' W. long.), and extending offshore 15 nautical miles, for a period of 30 days. Tow times must be limited to no more than 55 minutes through October 31, and no more than 75 minutes thereafter, as measured from the time that the trawl doors enter the water until they are removed from the water.

Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if possible, even though they are authorized under this action to use restricted tow times.

NMFS' gear experts have provided several general operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. In addition, the installation angle of a hard

TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can trap debris either on or in front of the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris. The use of the double cover flap TED will also aid in debris exclusion.

All of the above recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas. This action does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs

The authorization provided by this rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 223.206(d)(2) who are operating in hurricane-affected state and Federal waters off Louisiana from the western end of Timbalier Island (approximately 90° 33' W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54' W. long.), and extending offshore 15 nautical miles, for a period of 30 days. Through this temporary rule, shrimp trawlers may choose either restricted tow times or TEDs to comply with the sea turtle conservation regulations, as prescribed above.

Alternative to Required Use of TEDs; Termination

The AA, at any time, may withdraw or modify this temporary authorization to use tow time restrictions in lieu of TEDs through publication of a notice in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times, synchronized tow times, or withdrawal of the authorization if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles or no longer needed. The AA may also terminate this authorization if information from enforcement, state authorities, or NMFS indicates compliance cannot be monitored effectively. This authorization will expire automatically on November 28, 2008, unless it is explicitly extended through another notification published in the **Federal Register**.

Classification

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

The AA has determined that this action is necessary to respond to an environmental situation to allow more efficient fishing for shrimp, while providing effective protection for endangered and threatened sea turtles pursuant to the ESA and applicable regulations.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule. The AA finds that unusually high amounts of post-hurricane debris are creating special environmental conditions that make trawling with TED-equipped nets impractical. Prior notice and the opportunity to receive public comment are impracticable and contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing the affected industry timely relief from the effects of Hurricanes Gustav and Ike, while providing effective protection for sea turtles.

Many shrimp fishermen in Louisiana may be unable to operate under the special environmental conditions created by Hurricanes Gustav and Ike without an alternative to the use of TEDs. Therefore, The AA finds that there is good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553(d)(3) to provide alternatives to comply with the sea turtle regulations in a timely manner. For the reasons above, the AA finds that this temporary rule should not be subject to a 30–day delay in effective date, pursuant to 5 U.S.C. 553(d)(1).

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

Dated: October 29, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–26159 Filed 10–29–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 213
Monday, November 3, 2008

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

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN01

Presumptive Service Connection for Disease Associated With Exposure to Certain Herbicide Agents: AL Amyloidosis

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning presumptive service connection for a certain disease based on the most recent National Academy of Sciences (NAS) Institute of Medicine committee report, ''Veterans and Agent Orange: Update 2006 (Update 2006).'' This proposed amendment is necessary to implement a decision of the Secretary of Veterans Affairs that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of AL amyloidosis. The intended effect of this proposed amendment is to establish presumptive service connection for AL amyloidosis based on herbicide exposure.

DATES: Comments must be received by VA on or before January 2, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to ''RIN 2900–AN01—Disease Associated With Exposure to Certain Herbicide Agents: AL Amyloidosis.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rhonda F. Ford, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9739. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Public Law 102–4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with NAS to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the suspect disease. Section 3 of Public Law 102–4 also required that NAS submit reports on its activities every 2 years (as measured from the date of the first report) for a 10-year period. The Veterans Education and Benefits Expansion Act of 2001 (Benefits Expansion Act), Public Law 107–103, § 201(d), extended through October 1, 2014, the period for submission of NAS reports.

Section 1116(b) of title 38, United States Code, as enacted by the Agent Orange Act of 1991, Public Law 102–4, provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (i.e., the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans to an herbicide agent (i.e., a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Although 38 U.S.C. 1116(b) does not define ''credible,'' it does instruct the Secretary to ''take into consideration whether the results [of any study] are statistically significant, are capable of replication, and withstand peer review.'' Simply comparing the number of studies which report a positive relative risk to the number of studies which report a negative relative risk for a particular condition is not a valid method for determining whether the weight of evidence overall supports a finding that there is or is not a positive association between herbicide exposure and the subsequent development of the particular condition. Because of differences in statistical significance, confidence levels, control for confounding factors, bias, and other pertinent characteristics, some studies are clearly more credible than others, and the Secretary has given the more credible studies more weight in evaluating the overall weight of the evidence concerning specific diseases.

Section 2 of the Agent Orange Act of 1991, Public Law 102–4, provided that the congressional mandate that the Secretary establish presumptions of service connection under 38 U.S.C. 1116(b) would expire 10 years after the first day of the fiscal year in which the NAS transmitted its first report to VA. The first NAS report was transmitted to VA in July 1993, during the fiscal year that began on October 1, 1992. Accordingly, under the Agent Orange Act of 1991, Public Law 102–4, the mandate for VA to issue regulatory

presumptions as specified in section 1116(b) expired on September 30, 2002. In December 2001, however, Congress enacted the Benefits Expansion Act, section 201(d) of which extended the mandate under section 1116(b) through September 30, 2015. Pursuant to the Benefits Expansion Act, Public Law 107–103, VA must issue new regulations between October 1, 2002, and September 30, 2015, establishing additional presumptions of service connection for diseases that are found to be associated with exposure to an herbicide agent.

I. History of Agent Orange Presumptions

Pursuant to 38 U.S.C. 1116 and prior NAS reports received between July 1993 and March 2005, VA regulations contain presumptions of service connection for eleven categories of disease based on exposure to an herbicide agent. Those diseases are listed in 38 CFR 3.309(e) as follows: Chloracne or other acneform disease consistent with chloracne, Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes), Hodgkin's disease, Chronic lymphocytic leukemia, Multiple myeloma, Non-Hodgkin's lymphoma, Acute and subacute peripheral neuropathy, Porphyria cutanea tarda, Prostate cancer, Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea), and Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma).

If a veteran who was exposed to an herbicide agent in service subsequently develops one of the presumptive diseases, VA will presume the disease was caused by the exposure to an herbicide agent in service for purposes of establishing entitlement to service-connected benefits. To qualify for this presumption, chloracne, porphyria cutanea tarda, and acute and subacute peripheral neuropathy must become manifest to a degree of disability of 10 percent or more within 1 year after the date of last exposure. The other conditions are presumed service connected if they are manifest to a degree of disability of 10 percent or more at any time after exposure. 38 U.S.C. 1116(a)(2). VA presumes that any veteran who served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, was exposed to an herbicide agent during such service. 38 U.S.C. 1116(f).

II. Prior Actions Concerning AL Amyloidosis

VA identified AL amyloidosis as a concern after the publication of Veterans and Agent Orange: Update 1998. AL amyloidosis was considered by the NAS in its reports: Veterans and Agent Orange: Update 2000, Veterans and Agent Orange: Update 2002, and Veterans and Agent Orange: Update 2004. In these reports, NAS concluded that there was inadequate or insufficient evidence to determine whether there was an association between exposure to the compounds of interest and AL amyloidosis. After reviewing each of those reports, the Secretary determined that the credible evidence against an association between exposure to an herbicide agent and the occurrence of AL amyloidosis in exposed persons outweighed the credible evidence for such an association, and that a positive association therefore did not exist. 72 FR 32395, 32405 (June 12, 2007); 68 FR 27630, 27640 (May 20, 2003); 67 FR 42600, 42607–08 (June 24, 2002).

III. Latest NAS Review of AL Amyloidosis

In Update 2006, VA specifically requested a focused review of the evidence related to whether the occurrence of acute myeloid leukemia, tonsil cancer, AL amyloidosis, and lupus may be associated with exposure to the components of herbicides used by the military in Vietnam and requested explicit indication of the appropriate category of association for all forms of cancer. NAS issued its report, ''Veterans and Agent Orange: Update 2006'' on July 27, 2007. In pertinent part in that report, NAS concluded that ''there is limited or suggestive evidence of an association between exposures to the compounds of interest and AL amyloidosis.'' The term ''limited or suggestive evidence of an association,'' as explained in the NAS report, means that the evidence suggests an association between exposure to herbicides and the outcome considered, but the evidence is limited because chance, bias, and confounding could not be ruled out with confidence. For example, a well-conducted study showing a positive association combined with less compelling results from studies of populations with similar exposures could constitute such evidence.

In Update 2006, NAS re-categorized the section on AL amyloidosis from its position in the previous reports, where it was grouped with a variety of non-neoplastic health conditions, and placed it closer to related conditions, such as multiple myeloma and some types of B-cell lymphoma. The conditions share several biological features, most notably clonal hyperproliferation of B-cell-derived plasma cells and production of abnormal amounts of immunoglobulins. NAS found that because AL amyloidosis is a rare condition, there is little epidemiologic literature. One study indicates that AL amyloidosis and non-Hodgkin's lymphoma are closely related. Another study reviewed the relationship between AL amyloidosis and other plasma cell disorders. It describes AL amyloidosis as a clonal plasma cell disorder characterized by low tumor burden but profound multisystemic disease. The observation of common chromosomal abnormalities in AL amyloidosis and multiple myeloma and of ''progression'' from AL amyloidosis to multiple myeloma support the biologic plausibility of linking AL amyloidosis with multiple myeloma. It is known that AL amyloidosis is associated with B-cell diseases and roughly 15–20 percent of the time it occurs with multiple myeloma. Other diagnoses associated with AL amyloidosis include B-cell lymphomas (which are types of non-Hodgkin's lymphoma), monoclonal gammopathies, agammaglobulinemia, and monoclonal gammopathy of undetermined significance. Thus, AL amyloidosis can result from such medical conditions as multiple myeloma and B-cell lymphomas for which there is evidence of association with exposure to the compounds of interest. The NAS committee's conclusion that there is limited or suggestive evidence of an association between herbicide exposure and AL amyloidosis is predicated primarily on the evidence of a pathophsyiological association between AL amyloidosis and these other diseases, which have previously been found to be associated with herbicide exposure.

IV. The Secretary's Determination on AL Amyloidosis

After considering all of the evidence, the Secretary has determined that there is a positive association between exposure to herbicide agents and the occurrence of AL amyloidosis.

The biological and pathophysiological features of AL amyloidosis link it to multiple myeloma and some lymphomas that are associated with herbicide exposure in pervious NAS reports. Establishing presumptive service connection for AL amyloidosis is consistent with existing VA recognition of multiple myeloma and some lymphomas as presumptively service connected based on exposure to an herbicide agent. Although there is relatively little direct epidemiological evidence concerning the relation of AL amyloidosis to herbicide exposure, the Secretary notes that NAS considered the evidence linking AL amyloidosis to

multiple myelomas and lymphomas to be significant, if indirect, evidence of an association. Therefore, the Secretary concludes that the credible evidence for an association between exposure to an herbicide agent and the occurrence of AL amyloidosis in humans outweighs the credible evidence against such an association. Accordingly, the Secretary has determined that a presumption of service connection for AL amyloidosis is warranted pursuant to 38 U.S.C. 1116(b).

This proposed rule does not reflect determinations concerning any disease other than AL amyloidosis. The Secretary's determinations concerning other diseases discussed in the Update 2006 report will be addressed in future documents published in the **Federal Register**.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in 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 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposed rule are 64.109, Veterans Compensation for Service-Connected Disability, and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Veterans, Vietnam.

Approved: September 30, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

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

§ 3.309 [Amended]

2. In § 3.309(e) the listing of diseases is amended by adding ''AL amyloidosis'' immediately preceding ''Chloracne or other acneform disease consistent with chloracne.''

[FR Doc. E8–26175 Filed 10–31–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AM81

Elimination of Co-Payment for Weight Management Counseling

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is withdrawing VA's proposal published in the **Federal Register** at 73 FR 20579 on April 16, 2008, to amend our medical regulations to designate weight management counseling (individual and group sessions) as a service that is not subject to VA's co-payment requirements. VA received no significant adverse comments concerning the proposed rule or its companion substantially identical direct final rule published on the same date. In a companion document in this issue of the **Federal Register**, we are confirming that the direct final rule became effective on June 16, 2008. Accordingly, this document withdraws as unnecessary the proposed rule.

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Director, Business Policy, Chief Business Office (16), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1591 (this is not a toll-free number).

Approved: October 27, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E8–26174 Filed 10–31–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

RIN 0648–AX04

Endangered and Threatened Wildlife and Plants: Proposed Rulemaking to Designate Critical Habitat for the Threatened Southern Distinct Population Segment of North American Green Sturgeon

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

ACTION: Extension of public comment period on proposed rule.

SUMMARY: This notice extends for 45 days the public comment period on a proposed rule to designate critical habitat for the threatened Southern Distinct Population Segment of North American green sturgeon, as published on September 8, 2008, and corrected on October 7, 2008.

DATES: The deadline for comments on the proposed rule will be extended from November 7, 2008, to December 22, 2008. Comments must be received by 5 p.m. Pacific standard time on December 22, 2008.

ADDRESSES: You may submit comments on the proposed rule, identified by RIN 0648–AX04, by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 1–562–980–4027, Attention: Melissa Neuman.
- Mail: Submit written comments to the Chief, Protected Resources Division, Southwest Region, National Marine Fisheries Service, 650 Capitol Mall, Sacramento, CA 95814–4706.

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 (please enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, Southwest Region (562) 980–4115, or Lisa Manning, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

The Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*; hereafter, ''Southern DPS'') was listed as threatened under the Endangered Species Act (ESA) on April 7, 2006 (71 FR 17757). A proposed rule to designate critical habitat for the Southern DPS of green sturgeon was published in the **Federal Register** on September 8, 2008 (73 FR 52084). On October 7, 2008, a notice was published in the **Federal Register** announcing a public workshop on October 16, 2008, and making a technical correction to the proposed rule concerning the map of proposed critical habitat for the Southern DPS in California (73 FR 58527). The areas proposed for designation include: coastal U.S. marine waters within 110 meters (m) depth from Monterey Bay, California (including Monterey Bay), north to Cape Flattery, Washington, including the Strait of Juan de Fuca, Washington, to its United States boundary; the Sacramento River, lower Feather River, and lower Yuba River in California; the Sacramento-San Joaquin Delta and Suisun, San Pablo, and San Francisco bays in California; the lower Columbia River estuary; and certain coastal bays and estuaries in California (Humboldt Bay), Oregon (Coos Bay, Winchester Bay, and Yaquina Bay), and Washington (Willapa Bay and Grays Harbor). The areas proposed for designation comprise approximately 325 miles (524 km) of freshwater river habitat, 1,058 square miles (2,739 sq km) of estuarine habitat, 11,927 square miles (30,890 sq km) of coastal marine habitat, and 136 square miles (352 sq km) of habitat within the Yolo and Sutter bypasses (Sacramento River, CA).

Under section 7 of the ESA, Federal agencies are required to insure that any actions they carry out, authorize, or fund do not destroy or adversely modify designated critical habitat. A wide range of agency actions may be subject to the ESA section 7 consultation process including, but not limited to: the installation and operation of hydropower dams; the installation and operation of water diversions; in-water construction or alterations; dredging operations and disposal of dredge material; National Pollutant Discharge Elimination System permit activities and activities generating non-point source pollution (e.g., agricultural runoff); power plant operations; operations of liquefied natural gas projects; tidal or wave energy projects; discharges from desalination plants; commercial shipping (e.g., discharges, oil spills); aquaculture; bottom trawl fisheries; and habitat restoration activities.

The deadline for comments on the proposed rule was November 7, 2008. This extension of the comment period until December 22, 2008, is in response to requests made by the public. We solicit additional information and comments from the public concerning this proposed rule, including information and comments on the biological basis supporting the proposed rule; the benefits of the proposed critical habitat designation to the Southern DPS of green sturgeon; and the economic, national security, and other relevant impacts of the proposed designation.

Dated: October 28, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–26155 Filed 10–31–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 213

Monday, November 3, 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

Forest Service

Black Hills National Forest, Bearlodge Ranger District, Sundance, WY—Rattlesnake Forest Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to implement multiple resource management actions in the Rattlesnake Project Area to implement the amended Black Hills National Forest Land and Resource Management Plan. The proposed action includes approximately 11,000 acres of commercial timber harvest, 5,000 acres of non-commercial vegetation management, 6,000 acres of prescribed burning, three miles of road construction, road improvements, and watershed improvements. Prescribed burning is proposed in a roadless area.

DATES: Comments concerning the scope of the analysis must be received by December 3, 2008. The draft EIS is expected to be available for public review in March 2009, and the final EIS is expected to be completed by June 2009.

ADDRESSES: Send written comments to Rattlesnake Project, c/o Content Analysis Group, 172 E. 500 S., Bountiful, UT 84010. *Fax number:* (801) 397–1605. *Electronic mail: bhnfcontentanalysisgroup.com.* Comments may be hand-delivered to the Bearlodge Ranger District office, 101 South 21st Street, Sundance, Wyoming, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Krueger, Resource Planner, Bearlodge Ranger District, Black Hills National Forest. Telephone number: (307) 283–1361.

SUPPLEMENTARY INFORMATION:

Purpose of and Need for Action

The purpose of actions proposed under the Rattlesnake Forest Management Project is to provide biologically diverse ecosystems, protect basic resources, and provide for sustained commodity uses by reducing crown fire hazard and wildfire threats to private property, reducing risk of mountain pine beetle infestation, producing commercial timber now and creating conditions for future timber production, conserving and enhancing big game winter range, enhancing forest structural diversity, and conserving and enhancing late successional landscapes.

Proposed Action

The Rattlesnake Project Area covers approximately 42,171 acres of National Forest System land and 3,935 acres of interspersed private land east of Sundance, Wyoming. To reduce wildfire hazard, the Forest Service proposes to thin pine stands, construct fuel breaks, reduce fuels adjacent to populated areas and across the landscape, reduce pine competition with aspen and birch stands, and conduct prescribed burning. To reduce risk of beetle infestation, activities would include thinning and regeneration of pine stands. To produce commercial timber and create conditions for future timber production, proposed activities include regeneration and shelterwood removal in pine stands, thinning of merchantable and submerchantable pine, and reduction of burr oak competition. To conserve and enhance winter range, activities would include uneven-age management of pine stands, reduction of pine and oak competition with desirable forage, and prescribed burning. To enhance forest structural diversity, the proposal includes regeneration harvest in pine and conservation of stands that could develop into late successional forest. Road construction, repair, and improvement would occur in support of these activities. New roads would be closed following harvest, and existing roads not part of the National Forest System could also be closed in conjunction with this project. To conserve and enhance late successional landscapes (management area 3.7), the Forest Service would conduct prescribed burning. Other proposed enhancement activities include watershed improvement through road and stream rehabilitation.

The Rattlesnake Project Area includes the 7,944-acre Sand Creek Roadless Area. Most of the Sand Creek area is unsuitable for timber harvest, and new road construction is prohibited in much of the area by Forest Plan direction, severely limiting opportunities for mechanical treatment. The Forest Service considers access to the area by commercial equipment impractical at this time and has chosen to focus on objectives that could be achieved by non-commercial means. As a result, the only action proposed in the Sand Creek Roadless Area is prescribed burning (2,386 acres), with the purpose of promoting late successional forest attributes.

Background

The Rattlesnake Project area encompasses the area of the Cement Project. The Forest Service approved the Cement Project on February 20, 2004. The project was litigated. Following a July 2005 wildfire that substantially altered forest conditions in the Cement Project area, the Forest Service withdrew the project. The complaint was subsequently dismissed in April 2006.

In the course of the withdrawal of the Cement Project decision and dismissal of the complaint, the Forest Service made several commitments regarding any new proposal in the Cement Project Area. These commitments pertained to addressing certain changed conditions; developing the range of alternatives; and soliciting and considering public comment on the new proposal. The Forest Service intends to honor these commitments in the analysis process for the Rattlesnake Project.

The Rattlesnake Project Area includes the Cement Project Area but is a new and separate proposal from the earlier Cement Project. Initial planning for the Rattlesnake Project began in October 2007 with a review of existing forest conditions and amended Forest Plan direction for management of the area. Circumstances affecting National Forest System lands in the Rattlesnake Project Area have changed substantially since 2004. (1) The Phase II Amendment to the Forest Plan was approved on October 31, 2005. This amendment altered management direction for the

Black Hills National Forest, including the Rattlesnake Project area, by adding broad-scale objectives increasing management emphasis on hazardous fuels, forest structural diversity, and habitat for rare species. These changes directly affect the type and extent of vegetation management actions the Forest Service takes in the Black Hills. (2) The Cement Fire of July 2005 burned 2,079 acres of National Forest System land in the Rattlesnake Project area. Approximately 77 percent of this area burned at moderate or high intensity, resulting in the mortality of an estimated 1,925,300 cubic feet of sawtimber. (3) Population adjacent to the Rattlesnake Project Area has increased in the last four years with subdivision of the Red Canyon Ranch. These developments could be affected by hazardous fuel conditions in the project area. (4) Mountain pine beetle populations have increased dramatically in an area about five miles south of the Rattlesnake Project area, causing high levels of pine mortality on several hundred acres. This infestation has the potential to spread to the Rattlesnake area. (5) The Forest Service has issued new regulations implementing the National Forest Management Act. These new regulations replace earlier direction under which the Cement Project decision was analyzed and approved. The new planning regulations make it clear that they have minimal application at the project level. This project would be conducted in accordance with the requirements of the new regulations.

Responsible Official

Steve Kozel, District Ranger, Bearlodge Ranger District, Black Hills National Forest, 101 South 21st Street, PO Box 680, Sundance, Wyoming 82729.

Nature of Decision To Be Made

The decision to be made is whether to approve the proposed action or alternatives at this time. No Forest Plan amendments are proposed.

Scoping Process

Comments and input regarding the proposed action are being requested from the public and other interested parties in conjunction with this notice of intent. The comment period will be open for thirty days, beginning on the date of publication of this notice of intent. A public meeting will be held on November 13, 2008, 6–8 p.m., at the Bearlodge Ranger District Office, 101 S. 21st St., Sundance, Wyoming. Response to the draft EIS will be sought from the interested public beginning approximately in March 2009.

Comment Requested

This notice of intent initiates the scoping process, which guides development of the environmental impact statement. It is our desire to involve interested parties in identifying the issues related to proposed activities. Comments will assist in identification of key issues and opportunities to develop project alternatives and mitigation measures.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft EIS will be prepared for comment. The comment period on the draft EIS will extend 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. This notice is expected to appear in February 2009.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final ETS may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 23, 2008.

Craig Bobzien,

Forest Supervisor.

[FR Doc. E8–26131 Filed 10–31–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 0810151360–81363–01]

Annual Wholesale Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Wholesale Trade Survey (AWTS). The Census Bureau has determined a need to collect data covering annual sales, e-commerce sales, inventories, purchases, commissions, and operating expenses for the wholesale trade sector. These data are important inputs to the Bureau of Economic Analysis's preparation of National Income and Products accounts and its annual input-output tables.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Miller, Chief, Current Wholesale Branch, Service Sector Statistics Division, at (301) 763–2758, or by e-mail at *John.P.Miller@census.gov*.

SUPPLEMENTARY INFORMATION: The AWTS is a continuation of similar wholesale trade surveys conducted each year for wholesale distributors; manufacturers' sales branches and offices (MSBOs); and agents, brokers, and electronic markets (AGBRs). This survey provides data on annual sales, e-commerce sales, inventories, and total operating expenses for wholesale distributors and MSBOs, purchases of goods for sale for wholesale distributors, and commissions and sales on the account of others for AGBRs.

The Census Bureau will require a selected sample of firms operating wholesale establishments in the United States (with sales size determining the probability of selection) to report in the

2008 AWTS. The sample will provide, with measurable reliability, statistics on the subjects specified above. We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt by mail, fax, or over the Internet, using the ''Census Taker'' option. ''Census Taker'' is a software system that provides a highly secure and user-friendly means of collecting survey and census information.

The Census Bureau is authorized to take surveys that are necessary to furnish current data on the subject covered by the censuses authorized by Title 13, United States Code (U.S.C.), Sections 182, 224, and 225. This survey will provide continuing and timely national statistics data on wholesale trade for the period between economic censuses. For 2008, the survey will include separate samples for wholesale distributors, MSBOs, and AGBRs' companies in the wholesale sector. The data collected in this survey will be similar and within the general scope and nature of those in the economic census. The data collected will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, Title 44, U.S.C., Chapter 35, OMB approved this survey under OMB control number 0607–0195.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: October 28, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

[FR Doc. E8–26078 Filed 10–31–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Asian Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee (CAC) on the Asian Population. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by December 15, 2008.

ADDRESSES: Please submit nominations to Jeri Green, Chief, CAC Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at 301–763–8609, or by e-mail to *jeri.green@census.gov*.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Chief, CAC Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code (U.S.C.), Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Asian communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the Asian population and on ways data can be disseminated for maximum usefulness to the Asian population.

2. The Committee draws upon prior decennial planning efforts, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Decennial Census Program.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce. They are appointed to the nine-member Committee for a period of three years.

2. Members will be re-evaluated at the conclusion of the three-year term with the prospect of renewal, pending meeting attendance, administrative compliance, advisory committee needs, and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce (DOC) guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, technical expertise, community involvement, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership, as well as submission of required annual financial disclosure statements.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns, issues, and/or data needs of the Asian community. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the Asian population and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (résumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The DOC is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: October 28, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

[FR Doc. E8–26079 Filed 10–31–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Native Hawaiian and Other Pacific Islander Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee (CAC) on the Native Hawaiian and Other Pacific Islander Populations. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by December 3, 2008.

ADDRESSES: Please submit nominations to Jeri Green, Chief, CAC Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at 301–763–8609, or by e-mail to *jeri.green@census.gov.*

FOR FURTHER INFORMATION CONTACT: Jeri Green, Chief, CAC Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Native Hawaiian and Other Pacific Islander communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the Native Hawaiian and Other Pacific Islander populations, and on ways data can be disseminated for maximum usefulness to the Native Hawaiian and Other Pacific Islander populations.

2. The Committee draws upon prior decennial planning efforts, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Decennial Census Program.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce. They are appointed to the nine-member Committee for a period of three years.

2. Members will be re-evaluated at the conclusion of the three-year term with the prospect of renewal, pending meeting attendance, administrative compliance, advisory committee needs, and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce (DOC) guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, technical expertise, community involvement, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership, as well as submission of required annual financial disclosure statements.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns, issues, and/or data needs of the Native Hawaiian and Other Pacific Islander communities. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the Native Hawaiian and Other Pacific Islander populations and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (résumé or curriculum vitae) must be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The DOC is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: October 28, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

[FR Doc. E8–26080 Filed 10–31–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for December 2008

The following Sunset Reviews are scheduled for initiation in December 2008 and will appear in that month's

Notice of Initiation of Five-year Sunset Reviews.

Antidumping Duty Proceedings	Department Contact
Prestressed Concrete Steel Wire Strand from Mexico (A–201–831)	Dana Mermelstein (202) 482–1391
Prestressed Concrete Steel Wire Strand from Thailand (A–549–820)	Dana Mermelstein (202) 482–1391
Prestressed Concrete Steel Wire Strand from Brazil (A–351–837)	Dana Mermelstein (202) 482–1391
Prestressed Concrete Steel Wire Strand from India (A–533–828)	Dana Mermelstein (202) 482–1391
Prestressed Concrete Steel Wire Strand from South Korea (A–580–852)	Dana Mermelstein (202) 482–1391
Prestressed Concrete Steel Wire Strand from Japan (A–588–068)	Dana Mermelstein (202) 482–1391
Countervailing Duty Proceedings.	
Prestressed Concrete Steel Wire Strand from India (C–533–829)	Brandon Farlander(202) 482–0182
Suspended Investigations.	
No Sunset Reviews of suspended investigations are scheduled for initiation in December 2008..	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3--Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) . The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 23, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–26161 Filed 10–31–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review (POR). We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the initiation **Federal Register** notice.

Opportunity to Request a Review:

Not later than the last day of November 2008,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

Antidumping Duty Proceedings	Period
ARGENTINA: Barbed Wire & Barbless Fencing Wire.	
A–357–405	11/1/07 - 10/31/08
BRAZIL: Circular Welded Non–Alloy Steel Pipe.	
A–351–809	11/1/07 - 10/31/08
HUNGARY: Sulfanilic Acid.	
A–437–804	11/1/07 - 11/7/07

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

Antidumping Duty Proceedings	Period
MEXICO: Circular Welded Non–Alloy Steel Pipe.	
A–201–805	11/1/07 - 10/31/08
PORTUGAL: Sulfanilic Acid.	
A–471–806	11/1/07 - 11/7/07
REPUBLIC OF KOREA: Circular Welded Non–Alloy Steel Pipe.	
A–580–809	11/1/07 - 10/31/08
TAIWAN: Certain Hot–Rolled Carbon Steel Flat Products.	
A–583–835	11/1/07 - 10/31/08
TAIWAN: Circular Welded Non–Alloy Steel Pipe.	
A–583–814	11/1/07 - 10/31/08
THAILAND: Certain Hot–Rolled Carbon Steel Flat Products.	
A–549–817	11/1/07 - 10/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Certain Cut–to-Length Carbon Steel Plate.	
A–570–849	11/1/07 - 10/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Certain Hot–Rolled Carbon Steel Flat Products.	
A–570–865	11/1/07 - 10/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Fresh Garlic.	
A–570–831	11/1/07 - 10/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Paper Clips.	
A–570–826	11/1/07 - 10/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Pure Magnesium in Granular Form.	
A–570–864	11/1/07 - 10/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Refined Brown Aluminum Oxide.	
A–570–882	11/1/07 - 10/31/08
UKRAINE: Certain Hot–Rolled Carbon Steel Flat Products.	
A–823–811	11/1/07 - 10/31/08
Countervailing Duty Proccedings.	
HUNGARY: Sulfanilic Acid.	
C–437–805	1/1/07 - 11/7/07
Suspension Agreements.	
UKRAINE: Certain Cut–to-Length Carbon Steel Plate.	
A–823–808	11/1/07 - 10/31/08

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at http://ia.ita.doc.gov.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of November 2008. If the Department does not receive, by the last day of November 2008, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 23, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–26166 Filed 10–31–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes from Thailand: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 3, 2008.

SUMMARY: On September 30, 2008, the Department of Commerce (the Department) received a request to conduct a new shipper review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d), we are initiating a new shipper review of Pacific Pipe Public Company, Limited (Pacific Pipe), the exporter and producer that requested the new shipper review, for the period of review March 1, 2008 through September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Jacqueline Arrowsmith, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2371 or (202) 482–5255, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request from Pacific Pipe, in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on circular welded carbon steel pipes and tubes (Pipes and Tubes) from Thailand. *See Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 51 FR 8341 (March 11, 1986). In addition, pursuant to 19 CFR 351.214(d)(1), Pacific Pipe's request was made within the deadline for a six-month semiannual review. Pacific Pipe identified itself as the producer and exporter of subject merchandise.

As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), Pacific Pipe certified it did not export pipes and tubes to the United States during the period of investigation (POI) (September 1984 through February 1985), and that since the date of initiation of the investigation, it has never been affiliated with any exporter or producer that exported pipes and tubes to the United States during the POI, including any exporter or producer who exported the subject merchandise that was not individually examined. It also submitted documentation establishing the dates on which Pacific Pipe first shipped and entered the subject merchandise to the United States, the volume of that first shipment, and the date of Pacific Pipe's first sale to an unaffiliated customer in the United States. Pacific Pipe stated it had not made any subsequent shipments of pipes and tubes to the United States.

On October 2, 2008, we received a letter from domestic producer Allied Tube and Conduit requesting the Department deny Pacific Pipe's request for a new shipper review because the entry of Pacific Pipe's shipment occurred after the normal six–month period of review (March 1, 2008 through August 31, 2008). Pacific Pipe responded in a letter dated October 16, 2008, stating it had met the requirements for requesting a review.

On October 20, 2008, the Department requested Pacific Pipe to correct its request to reflect the correct period of investigation in its exporter's certification. Pacific Pipe submitted a revised certification on October 21, 2008.

Initiation of New Shipper Review

In accordance with section 751(a)(2)(B) of the Act, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating a new shipper review for Pacific Pipe. *See Memorandum to the File through Barbara E. Tillman, Director, AD/CVD Operations Office 6, Import Administration from the Team*, ''New Shipper Review Initiation Checklist,'' dated October 22, 2008, on file in the Central Records Unit, room 1117, of the main Commerce building. We intend to issue the preliminary results of this review no later than 180 days after the date on which this review is initiated, and the final results of this review within 90 days after the date on which the preliminary results are issued.

Pursuant to 19 CFR 351.214(g)(1)(i)(B), the period of review (POR) for a new shipper review initiated in the month immediately following the semiannual anniversary month, will normally be the six–month period immediately preceding the semiannual anniversary month. However, when the new shipper's first shipment has entered after the POR, the Department may expand the POR, unless an expansion would be likely to prevent the completion of the review within the time limits set by the Department's regulations. See 19 CFR 351.214(f)(2)(ii). The documentation provided by Pacific Pipe indicates that its first shipment entered approximately ten days after the end of the six-month POR, and that its first sale to an unaffiliated customer occurred during the six–month POR. In accordance with 19 CFR 351.214(f)(2)(ii), we are extending the POR by 30 days to September 30, 2008, to capture the entry of Pacific Pipe's first shipment. The Department finds that this delay does not prevent the completion of the review within the time limits set by the Department's regulations. Therefore, the POR for this new shipper review is March 1, 2008 through September 30, 2008.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new–shipper reviews. Therefore, the posting of a bond under section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e) in lieu of a cash deposit is not available in this case. Importers of subject merchandise manufactured and exported by Pacific Pipe must continue to pay a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current all–others rate of 15.67 percent.

Interested parties seeking access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a) of the Act and 19 CFR 351.214(d).

Dated: October 28, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–26169 Filed 10–31–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Admnistration

[A–533–820]

Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or James Terpstra, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1168, or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2007, United States Steel Corporation (''Petitioner'') and Nucor Corporation requested an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products,[1] which were produced or exported by Ispat Industries Limited (''Ispat''), JSW Steel Limited (''JSW''), Tata Steel Limited (''Tata''), and Essar Steel Limited (''Essar''). On January 28, 2008, the Department of Commerce (''the Department'') published a notice of initiation of antidumping duty administrative review of *Indian Hot–Rolled* for the period December 1, 2006, through November 30, 2007 (the ''POR''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 4829 (January 28, 2008) (''*Initiation Notice*''). On February 25, 2008, the Department issued a memorandum informing the interested parties of the Department's intention to limit the number of companies it would examine in this review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (the ''Act''), as well as the data on which the Department would rely on making that determination.[2] On February 26–27, 2008, Ispat, Tata, and JSW each informed the Department that they did not have shipments of the subject merchandise to the United States during the POR.

On August 20, 2008, the Department published a notice of intent to rescind this administrative review in part with respect to Ispat, JSW and Tata. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Intent to Rescind Antidumping Duty Administrative Review in Part and Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Review*, 73 FR 49169 (August 20, 2008) (''*Notice of Intent to Rescind*''). On September 2, 2008, the Department sent a letter to all interested parties with Draft Customs Instructions and invited comment on the Department's intent to rescind the administrative review with respect to Ispat, JSW and Tata. *See* Memorandum to File, Re: Draft Customs Instructions Certain Hot–Rolled Carbon Steel Flat Products from India (September 2, 2008) (''*Draft Notification of Rescission*''). The Department did not receive comments from any interested party.

Scope of the Order

The merchandise subject to this order is certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum–degassed, fully stabilized (commonly referred to as interstitial–free (''IF'')) steels, high–strength low–alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low–carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) 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 of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot–rolled carbon steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (''ASTM'') specifications A543, A387, A514, A517, A506)).
- Society of Automotive Engineers (''SAE'')/American Iron & Steel Institute (''AISI'') grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- United States Steel (''USS'') Abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications:

[1] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 60194 (December 3, 2001) (''Indian Hot-Rolled'').

[2] *See* Memorandum to File, Re: ''2006-2007 Antidumping Duty Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products from India,'' Subject: ''Customs and Border Protection Data for Selection of Respondents for Individual Review,'' from Cindy Robinson, Senior Financial Analyst, through James Terpstra, Program Manager, and Melissa Skinner, Office Director, Office 3, AD/CVD Operations, dated February 25, 2008 (''Hot-Rolled Memo'').

ASTM A506, A507).

- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel covered by this order, including: vacuum–degassed fully stabilized; high–strength low–alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Rescission of Administrative Review

On August 20, 2008, the Department published in the **Federal Register** its intent to rescind the administrative review in part. *See Notice of Intent to Rescind*, 73 FR 49169. In that notice we stated that since our examination of the entry data from U.S. Customs and Border Protection for Ispat, JSW, and Tata confirmed each of their assertions that they did not have shipments to the United States during the POR, we intended to rescind this review with respect to these three companies. On September 2, 2008, we sent our Draft Notification of Rescission to interested parties and invited them to comment on our intent to rescind the administrative review with regard to Ispat, JSW, and Tata. No comments were received. Consequently, the Department continues to treat Ispat, JSW, and Tata as non–shippers for the purpose of this review.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review with respect to a particular exporter or producer if the Department concludes that during the POR there were no entries, exports, or sales of the subject merchandise. Because there is no record evidence of entries, exports or sales of the subject merchandise by Ispat, JSW and Tata, we are rescinding this review in part.

As a result of the rescission of the administrative review, in part, with respect to Ispat, JSW, and Tata, only one respondent, Essar, remains in this review.

We are issuing this notice in accordance with section 751(a)(1) and 777(i)(1) of the Act and section 351.213(d)(4) of the Department's regulations.

Dated: October 28, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–26158 Filed 10–31–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-year (''Sunset'') Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-year Review* which covers the same orders.

EFFECTIVE DATE: November 3, 2008.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION: The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty order:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–570–881	731–TA–1021	PRC	Malleable Cast IronPipe Fittings	Sergio Balbontin (202) 482–6478
A–588–862	731–TA–1023	Japan	Ceramic Station Post Insulators	Brandon Farlander (202) 482–0182

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's sunset website at the following address: http://ia.ita.doc.gov/sunset/.

All submissions in these Sunset Reviews must be filed in accordance

with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. See 19 CFR 351.218(d)(1)(iii).

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: October 23, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–26160 Filed 10–31–08; 8:45 am]

BILLING CODE: 3510–DS–S

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Generic Request for Customer Service-Related Data Collections

AGENCY: National Institute of Standards and Technology (NIST).

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 2, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the collection instrument and instructions should be directed to Darla Yonder, Management Analyst, NIST, 301–975–4064 or via e-mail to *darla.yonder@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of surveys, both quantitative and qualitative. The surveys will be designed to determine the type and quality of the products, services, and information our key customers want and expect, as well as their satisfaction with and awareness of existing products, services, and information. In addition, NIST proposes other customer service satisfaction data collections that include, but may not be limited to focus groups, reply cards that accompany product distributions, and Web-based surveys and dialog boxes that offer customers the opportunity to express their level of satisfaction with NIST products, services, and information and for ongoing dialogue. NIST will limit its inquiries to data collections that solicit strictly voluntary options and will not collect information that is required or regulated. No assurances of confidentiality will be given. However, it will be completely optional for survey participants to provide their name or affiliation information if they wish to provide comments for which they elect to receive a response. NIST will not use electronic tracking and will not set cookies for Web-based customer responses.

II. Method of Collection

NIST will collect this information by electronic means, as well as by mail, fax, telephone, and person-to-person interaction.

III. Data

OMB Control Number: 0693–0031.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 6,000.

Estimated Time per Response: Less than 2 minutes for a response card; 2 hours for focus group participation. The average estimated response time is expected to be less than 30 minutes.

Estimated Total Annual Burden Hours: 3,022.

Estimated Total Annual Cost to Public: None.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 29, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–26124 Filed 10–31–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH17

Atlantic Highly Migratory Species (HMS); Atlantic Shark Management Measures; Research Fishery

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

ACTION: Notice of intent; request for applications.

SUMMARY: NMFS announces its request for applications for the 2009 shark research fishery from commercial shark fishermen with a directed or incidental permit. The shark research fishery allows for the collection of fishery–dependent data for future stock assessments while also allowing NMFS and commercial fishermen to conduct cooperative research to meet the shark research objectives for the Agency. The only commercial vessels authorized to land sandbar sharks are those participating in the shark research fishery. Shark research fishery permittees may also land non–sandbar large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks. Commercial vessels not participating in the shark research fishery may only land non–sandbar LCS, SCS, and pelagic sharks. Commercial shark fishermen who are interested in participating in the shark research fishery need to submit a completed Shark Research Fishery Permit Application in order to be considered. Generally, these permits will be valid through December 31, 2009, unless otherwise specified, subject to the terms and conditions of individual permits.

DATES: Shark Research Fishery Applications must be received no later than 5 p.m., local time, on December 3, 2008.

ADDRESSES: Please submit completed applications to the HMS Management Division at:

• Mail: Attn: Jess Beck, HMS Management Division (F/SF1), NMFS, 1315 East–West Highway, Silver Spring, MD 20910.

• Fax: (301) 713–1917

For copies of the Shark Research Fishery Permit Application, please write to the HMS Management Division at the address listed above, or call (301) 713–2347 (phone), or (301) 713–1917 (fax). Copies of the Shark Research Fishery Application are also available at the HMS website at *http://www.nmfs.noaa.gov/sfa/hms/index.htm*.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster–Geisz or Jess Beck, at (301) 713–2347 (phone) or (301) 713–1917 (fax).

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act). The Consolidated HMS Fishery Management Plan (FMP) is implemented by regulations at 50 CFR part 635.

The final rule for Amendment 2 to the Consolidated HMS FMP (73 FR 35778, June 24, 2008, corrected at 73 FR 40658, July 15, 2008) established, among other things, a shark research fishery to maintain time series data for stock assessments and to meet NMFS' 2009 research objectives. The shark research fishery also allows selected commercial fishermen the opportunity to earn revenue from selling more sharks, including sandbar sharks, than allowed in the rest of the commercial shark fishery. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land/harvest sandbars subject to the sandbar quota available each year. The base quota is 87.9 mt dw/year through December 31, 2012, although this number may be reduced in the event of overharvests, if any, and 116.6 mt dw/year starting on January 1, 2013. The selected shark research fishery permittees will also have access to the non–sandbar LCS, SCS, and pelagic shark quotas. Commercial fishermen not participating in the shark research fishery may land non–sandbar LCS, SCS, and pelagic sharks subject to retention limits and quotas per 50 CFR 635.24 and 635.27, respectively.

In 2008, selected vessels were allowed a trip limit of 2,750 lbs dw, of which no more than 2,000 lbs dw were allowed to be sandbar sharks. As of October 2008, vessels participating in the shark research fishery fished an average of 2 trips per month. The 2009 trip limits and number of trips per month will depend on the number of selected vessels, available quota, and objectives of the research fishery. Vessels selected for 2009 may not all have the same retention limit.

In order to participate in the shark research fishery, commercial shark fishermen need to submit a completed Shark Research Fishery Application showing the vessel and owner(s) meet the specific criteria outlined below.

Research Objectives

Each year, NMFS will determine the research objectives for the upcoming shark research fishery. The research objectives are developed by a shark board, which is comprised of representatives within NMFS including representatives from the Southeast Fisheries Science Center (SEFSC) Panama City Laboratory, Northeast Fisheries Science Center (NEFSC) Narragansett Laboratory, the Southeast Regional Office, Protected Species Division (SERO\PSD), and the HMS Management Division. The research objectives for 2009 are the same as the research objectives for 2008, and the shark board based them on the Southeast Data, Assessment and Review (SEDAR) 11, 2005/2006 LCS stock assessment. These research objectives include:

• collect reproductive and age data from sandbar sharks throughout the calendar year;

• collect reproductive and age data for Gulf of Mexico blacktip sharks for determination of the reproductive cycle (i.e., annual or biennial frequency);

• collect reproductive and age data from all species of sharks for additional species–specific assessments;

• monitor the size distribution of sandbar sharks and other species captured in the fishery;

• continue on–going tagging programs for identification of migration corridors and stock structure;

• maintain time–series of abundance from previously derived indices for the shark BLL observer program;

• acquire fin–clip samples of all species for genetic analysis;

• attach satellite archival tags to endangered smalltooth sawfish to

provide information on critical habitat and preferred depth, consistent with ESA requirements for such tagging under the SEFSC observer program take permit obtained through the 2008 Section 7 Consultation for the Continued Authorization of Shark Fisheries (Commercial Shark Bottom Longline, Commercial Shark Gillnet and Recreational Shark Handgear Fisheries) as Managed under the Consolidated Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (Consolidated HMS FMP), including Amendment 2 to the Consolidated HMS FMP (F/SER/2007/05044);

• attach satellite archival tags to prohibited dusky sharks to provide information on daily and seasonal movement patterns, and preferred depth; and,

• evaluate the effects of controlled gear experiments in order to determine the effects of potential hook changes to prohibited species interactions and fishery yields.

Additionally, some objectives were derived from the need for tagging studies, collection of genetic material, and controlled bottom longline (BLL) experiments to assess the impact of hook changes. The shark board decided to use the same objectives given the short time for research in 2008 (August to December) and the lack of a new stock assessment.

Selection Criteria

Shark Research Fishery Permit Applications will only be accepted from commercial shark fishermen that hold a current directed or incidental limited access permit. While incidental permit holders are welcome to submit an application, to ensure that an appropriate number of sharks are taken to meet the research objectives for this year, NMFS will be giving priority to directed permit holders. As such, qualified incidental permit holders will only be selected if there are not enough qualified directed permit holders to meet research objectives.

The Shark Research Fishery Permit Application includes, but is not limited to, a request for the following information: type of commercial shark permit possessed; past participation in the commercial shark fishery (not including sharks caught for display); past involvement and compliance with HMS observer programs per 50 CFR 635.7; past compliance with HMS regulations at 50 CFR part 635; availability to participate in the shark research fishery; ability to fish in the regions and season requested; ability to attend necessary meetings regarding the objectives and research protocols of the shark research fishery; and ability to carry out the research objectives of the Agency. An applicant that has been charged criminally or civilly (i.e., issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS–related violation will not be considered for participation in the shark research fishery. In addition, applicants who were selected to carry an observer in the previous two years for any HMS fishery, but failed to communicate with NMFS observer programs in order to arrange the placement of an observer before commencing any fishing trip that would have resulted in the incidental catch or harvest of any Atlantic HMS, per 50 CFR 635.7, will not be considered for participation in the 2009 shark research fishery. Applicants who were selected to carry an observer in the previous two years for any HMS fishery and failed to comply with all the observer regulations per 50 CFR 635.7, including failure to provide adequate sleeping accommodations per 50 CFR 635.7(e)(1), a sufficiently sized survival craft per 50 CFR 600.746(f)(6), or failure to pass a USCG safety examination per 50 CFR 600.746(c)(2) will also not be considered. Exceptions will be made for applicants that were selected for HMS observer coverage but did not fish in the quarter when selected. Applicants that do not possess a valid Unites States Coast Guard (USCG) safety inspection decal when the application is submitted will not be considered. Applicants that have been non–compliant with any of the HMS observer program regulations in the previous two years, as described above, may be eligible for future participation in shark research fishery activities by demonstrating two subsequent years of compliance with observer regulations at 50 CFR 635.7.

Selection Process

The HMS Management Division will review all submitted applications that are deemed complete and develop a list of qualified applicants. A qualified applicant is an applicant that has submitted a complete application and has met the selection criteria. Qualified applicants are eligible to be selected to participate in the shark research fishery for 2009. The HMS Management Division will provide the list of qualified applicants to the SEFSC. The SEFSC will then evaluate the list of qualified applicants and, based on the temporal and spatial needs of the research objectives, the availability of qualified applicants, and the available quota for a given year, will select approximately 10 qualified applicants to conduct the prescribed research. Where there are multiple qualified applicants that meet the criteria, permittees will be randomly selected. If a public meeting is deemed necessary, NMFS will announce details of a public selection meeting in a subsequent **Federal Register** notice.

Once the selection process is complete, NMFS will notify the selected applicants and issue the shark research fishery permits. If needed, NMFS will communicate with the shark research fishery permit holders to arrange a captain's meeting to discuss the research objectives and protocols. The shark research fishery permit holders must contact the NMFS observer coordinator to arrange the placement of a NMFS–approved observer for each shark research trip.

A shark research fishery permit will only be valid for the vessel and owner(s) and terms and conditions listed on the permit, and thus, cannot be transferred to another vessel or owner(s). Issuance of a shark research permit does not guarantee that the permit holder will be assigned a NMFS–approved observer on any particular trip. Rather, issuance indicates that a vessel may be issued a NMFS–approved observer for a particular trip, and on such trips, may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in 50 CFR 635.24(a). These retention limits will be based on available quota, number of vessels participating in the 2009 shark research fishery, the research objectives set forth by the shark board, and may vary by vessel and/or location. When not operating under the auspices of the shark research fishery, the vessel would still be able to land non–sandbar, SCS, and pelagic sharks subject to existing retention limits on trips without a NMFS–approved observer. The shark research permit may be revoked or modified at any time and does not confer the right to engage in activities beyond those listed on the shark research fishery permit.

Commercial shark permit holders (directed and incidental) are invited to submit an application to participate in the shark research fishery on an annual basis. Permit applications can be found on the HMS Management Division's website at: *http://www.nmfs.noaa.gov/sfa/hms/index.htm* or by calling (301) 713–2347. Final decisions on the issuance of a shark research fishery permit will depend on the submission of all required information, and NMFS' review of applicant information as outlined above. The 2009 shark research fishery will start after the opening of the shark fishery and under available quotas

as published in a separate **Federal Register** final rule.

Dated: October 28, 2008.

Emily H. Menashes

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

[FR Doc. E8–26156 Filed 10–31–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AX35

Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area

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

ACTION: Notification of U.S. fish quotas and an effort allocation.

SUMMARY: NMFS announces that fish quotas and an effort allocation are available for harvest by U.S. fishermen in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

DATES: Effective January 1, 2009, through December 31, 2009. Expressions of interest regarding U.S. fish quota allocations for all species except 3L shrimp will be accepted throughout 2009. Expressions of interest regarding the U.S. 3L shrimp quota allocation, the 3M shrimp effort allocation, and the 3LNO yellowtail flounder to be transferred by Canada will be accepted through November 18, 2008.

ADDRESSES: Expressions of interest regarding the U.S. effort allocation and quota allocations should be made in writing to Lekelia Jenkins in the NMFS Office of International Affairs, at 1315 East–West Highway, Silver Spring, MD 20910 (phone: 301–713–2276, fax: 301–713–2313, e–mail: *Kiki.Jenkins@noaa.gov*).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFC) Permit is available from Allison McHale, at the NMFS Northeast Regional Office at One Blackburn Drive, Gloucester, MA 01930 (phone: 978–281–9103, fax: 978–281–9135, e–mail: *allison.mchale@noaa.gov*) and from NAFO on the World Wide Web at *http://www.nafo.int*.

FOR FURTHER INFORMATION CONTACT: Lekelia Jenkins, 301–713–2276.

SUPPLEMENTARY INFORMATION:

Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 2008 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks and an effort allocation for one NAFO stock to be fished during 2009. The species, location, and allocation (in metric tons or effort) of these U.S. fishing opportunities, as found in Annexes I.A, I.B, and I.C of the 2009 NAFO Conservation and Enforcement Measures, are as follows:

(1) Redfish	NAFO Division 3M	69 mt
(2) Squid (*Illex*)	NAFO Subareas 3 & 4	453 mt
(3) Shrimp	NAFO Division 3L	334 mt
(4) Shrimp	NAFO Division 3M	1 vessel/100 days

Additionally, the United States may be transferred up to 1,000 mt of 3LNO yellowtail flounder from Canada's quota allocation for express use by U.S. vessels if the United States requests a transfer before January 1 of 2009 or any succeeding year through 2017. If such a request is made, an additional 500 mt of 3LNO yellowtail flounder would be made available on the condition that the United States transfers its shrimp allocation to Canada. Participants in this fishery will be restricted to an overall bycatch harvest limit for American plaice equal to 13% of the total yellowtail fishery.

Further, U.S. vessels may be authorized to fish any available portion of the 385 mt allocation of oceanic redfish in NAFO Subarea 2 and Divisions 1F and 3K available to NAFO members that are not also members of the Northeast Atlantic Fisheries Commission. Fishing opportunities may also be authorized for U.S. fishermen in the ''Others'' category for: Division 3LNO yellowtail flounder (85 mt); Division 3NO white hake (500 mt); Division 3LNO skates (500 mt); and Division 3O redfish (100 mt. Procedures for obtaining NMFS authorization are specified below.

U.S. Fish Quota Allocations

Expressions of interest to fish for any or all of the U.S. fish quota allocations, including the up to 1,500 mt of yellowtail flounder to be transferred by Canada under the circumstances described above, and ''Others'' category allocations in NAFO will be considered from U.S. vessels in possession of, or eligible for, a valid HSFC permit, which is available from the NMFS Northeast Regional Office (see **ADDRESSES**). All expressions of interest should be directed in writing to Lekelia Jenkins (see **ADDRESSES**). Letters of interest from U.S. vessel owners should include the name, registration, and home port of the applicant vessel as required by NAFO in advance of fishing operations. In addition, any available information on intended target species and dates of fishing operations should be included. To ensure equitable access by U.S. vessel owners, NMFS may promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

Note that vessels issued valid HSFC permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort–control, and possession limit restrictions, specified in 50 CFR 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel, or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in 50 CFR 648.23(b); and

(4) The vessel operator complies with the HSFC permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

U.S. 3M Effort Allocation

Expressions of interest in harvesting the U.S. portion of the 2009 NAFO 3M shrimp effort allocation (1 vessel/100 days) will be considered from owners of U.S. vessels in possession of a valid HSFC permit. All expressions of interest should be directed in writing to Lekelia Jenkins (see **ADDRESSES**).

Letters of interest from U.S. vessel owners should include the name,

registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In the event that multiple expressions of interest are made by U.S. vessel owners, NMFS may promulgate regulations designed to choose one U.S. applicant from among expressions of interest.

NAFO Conservation and Management Measures

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO–designated entries; adherence to NAFO hail system requirements; presence of an on–board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence to all relevant minimum size, gear, bycatch, and other requirements. Further details regarding these requirements are available from the NMFS Northeast Regional Office, and can also be found in the current NAFO Conservation and Enforcement Measures on the Internet (see **ADDRESSES**).

Chartering Arrangements

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2009 NAFO 3L shrimp quota allocation and/or 3M shrimp effort allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties under chartering arrangements to fish the 2009 U.S. quota allocation for 3L shrimp and/or the effort allocation for 3M shrimp. Under NAFO rules in effect through 2009, a vessel registered to another NAFO Contracting Party may be chartered to fish the U.S. shrimp quota and effort allocations provided that written consent for the charter is obtained from the vessel's flag state and the U.S. allocation is transferred to that flag state. NAFO Parties must be notified of such a chartering operation through a mail notification process.

A NAFO Contracting Party wishing to enter into a chartering arrangement with the United States must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures including, but not limited to, submission of the following reports to the NAFO Executive Secretary: provisional monthly catches within 30 days following the calendar month in which the catches were made; provisional daily catches of shrimp taken from Division 3L; provisional monthly fishing days in Division 3M within 30 days following the calendar month in which the catches were made; observer reports within 30 days following the completion of a fishing trip; and an annual statement of actions taken in order to comply with the NAFO Convention, and notification to NMFS of the termination of the charter fishing activities. Furthermore, the United States may also consider a Contracting Party's previous compliance with the NAFO bycatch provisions, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement.

Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Contracting Party under chartering arrangements should include information required by NAFO regarding the proposed chartering operation, including: the name, registration and flag of the intended vessel; a copy of the charter; the fishing opportunities granted; a letter of consent from the vessel's flag state; the date from which the vessel is authorized to commence fishing on these opportunities; and the duration of the charter (not to exceed six months). More details on NAFO requirements for chartering operations are available from NMFS (see **ADDRESSES**). In addition, expressions of interest for chartering operations should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the chartered vessel actually would take place; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that multiple expressions of interest are made by U.S. fishing interests proposing the use of chartering operations, the information submitted regarding benefits to the United States will be used in making a selection. In the event that applications by U.S. fishing interests proposing the use of chartering operations are considered, all applicants will be made aware of the allocation decision as soon as possible. Once the allocation has been awarded for use in a chartering operation, NMFS will immediately take appropriate steps to notify NAFO and transfer the U.S. 3L shrimp quota allocation and/or the 3M shrimp effort allocation to the appropriate Contracting Party.

After reviewing all requests for allocations submitted, NMFS may decide not to grant any allocations if it is determined that no requests meet the criteria described in this notice. All individuals/companies submitting expressions of interest to NMFS will be contacted if an allocation has been awarded. Please note that if the U.S. portion of any 2009 NAFO quota allocation and/or effort allocation, or the 3LNO yellowtail flounder transferred from Canada is awarded to a U.S. vessel or a specified chartering operation, it may not be transferred without the express, written consent of NMFS.

Dated: October 28, 2008.

Rebecca Lent

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E8–26154 Filed 10–31–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2007–OS–0136]

Defense Transportation Regulation, Part IV

AGENCY: Department of Defense; United States Transportation Command (USTRANSCOM).

ACTION: Notice.

SUMMARY: The Department of Defense has published Phase II Interim Final Business Rules for the Families First Personal Property Program in the Defense Transportation Regulation (DTR) Part IV (DTR 4500.9–R). These Phase II Business Rules were made available for public comment under a **Federal Register** Notice that published on April 1, 2008 (73 FR 17327). All comments have been reviewed and disposition is located on the USTRANSCOM Web site at *http://www.transcom.mil/j5/pt/dtr_part_iv.cfm*.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Teague, United States Transportation Command, TCJ5/4–PT, 508 Scott Drive, Scott Air Force Base, IL 62225–5357; 618) 229–1985.

SUPPLEMENTARY INFORMATION: Any changes as a result of comments received are identified on the disposition excel spreadsheet located on the USTRANSCOM Web site. Identified changes will be updated and published in the applicable business rules.

Dated: October 22, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–25998 Filed 10–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 3, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 28, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Weekly; Monthly; Annually.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 17,123,392.

Burden Hours: 8,341,867.

Abstract: The Free Application for Federal Student Aid (FAFSA) collects the data necessary to determine a student's eligibility for participation in the following federal student assistance programs identified in the Higher Education Act (HEA): The Federal Pell Grant Program; the Campus-Based Programs; the William D. Ford Federal Direct Loan Program; the Federal Family Education Loan Program; the Academic Competitiveness Grant; and the National Science and Mathematics Access to Retain Talent (SMART) Grant.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3804. 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. E8–26115 Filed 10–31–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos: 84.015A, 84.015B, 84.220A, 84.229A, and 84.269A]

Office of Postsecondary Education, International Education Programs Service

ACTION: Notice Announcing the Technical Assistance Workshop for Fiscal Year (FY) 2009 Title VI Institute for International Public Policy Program and FY 2010 Title VI National Resource Centers Program, Foreign Language and Area Studies Fellowships Program, Centers for International Business Education Program, and Language Resource Centers Program.

SUMMARY: The Department expects to hold competitions for grants under the above-referenced Title VI programs for FY 2009 and FY 2010. This notice provides information about a two-day technical assistance workshop to assist institutions of higher education interested in preparing grant applications for new awards under these programs. The International Education Programs Service staff, other Department staff, as well as guest speakers, will present information about the purpose of the Title VI programs, the selection criteria used to evaluate grant applications, data collection and performance reporting requirements, evaluation, the peer review process, submitting applications on the Grants.gov Apply site, guidance for preparing the application narrative and budget, competition priorities, if any, and other technical assistance topics.

Although the Department has not yet announced application deadline dates in the **Federal Register**, the Department is conducting this workshop to provide potential applicants with information they will need for preparing grant applications for competitions we expect to conduct for FY 2009 and FY 2010 new awards. Specific requirements for these competitions will be published in separate **Federal Register** notices. This notice announces the technical assistance workshop only.

FOR FURTHER INFORMATION CONTACT: Carla White, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8521. *Telephone:* (202) 502–7631. *E-mail: carla.white@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio

tape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: The Technical Assistance Workshop will be held at the following location: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (800) 228–9290, Reservation Code: DOEO.

The Technical Assistance Workshop will be held February 2–3, 2009, from 8 a.m. to 5 p.m. Registration packets will be available Sunday, February 1, from 4 p.m.–6 p.m., and on Monday, February 2, from 8 a.m.–9 a.m. A registration fee is not required for this workshop; however, space is limited. Attendees are responsible for making their own travel and hotel reservations. Please be advised that Title VI funds may not be used to attend this workshop. We encourage those who will be writing the grant application, collecting data for the application and performance reports, as well as those who will be submitting applications using the Grants.gov Apply site, to attend the workshop. We also encourage attendance from persons responsible for specific program areas such as evaluation, language assessment, outreach, and fellowships administration.

The full agenda for this workshop will be posted at a later date at the following Web site: *http://www.ed.gov/ope/iegps.*

Assistance to Individuals With Disabilities Attending the Technical Assistance Workshop

The technical assistance workshop site is accessible to individuals with disabilities. If you need an auxiliary aid or service to participate in the workshop (e.g., interpreting service, assistive listening device, or materials in an alternative format), notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least two weeks before the scheduled workshop date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have any questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or, in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1121–1123(c), 1130–1131.

Dated: October 29, 2008.

Cheryl A. Oldham,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E8–26164 Filed 10–31–08; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Federal Advisory Committee Act; Standards Board Charter Renewal

AGENCY: Election Assistance Commission.

ACTION: Notice of Charter Renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), the purpose of this notice is to announce that the Election Assistance Commission (EAC) has renewed the charter for the Standards Board for a two-year period through October 27, 2010. The Standards Board is a Federal advisory committee under the Federal Advisory Committee Act.

DATES: Renewed through October 27, 2010.

ADDRESSES: Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Gineen Beach, Designated Federal Officer, at (202) 566–3100. E-mail: *havainfo@eac.gov.*

SUPPLEMENTARY INFORMATION: The Standards Board is a Federal advisory committee created by statute whose mission is to advise the EAC through review of the voluntary voting systems guidelines; through review of voluntary guidance; and review of best practices recommendations. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the renewal of the Standards Board charter.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

Charter of the U.S. Election Assistance Commission Standards Board

Official Designation: Election Assistance Commission Standards Board

The U.S. Election Assistance Commission (EAC) hereby Charters the Standards Board established in title II section 211 of the Help America Vote Act of 2002 (HAVA) [Pub. L. 107–252] pursuant to the Federal Advisory Committee Act.

Objectives and Duties

1. The objective of the Standards Board (the Board) is to advise the EAC through review of the voluntary voting systems guidelines (VVSG) described in title II Part 3 of HAVA when the EAC proposes updates to the VVSG; through review of the voluntary guidance described under title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of title II of HAVA.

2. The Board will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act.

Membership

1. The Board shall consist of 110 members. Fifty-five members shall be State election officials selected by the chief State election official of each State. Fifty-five shall be local election officials selected under a process supervised by the chief election official of the State. The two members of the Standards Board who represent the same State may not be members of the same political party (HAVA title II section 213(a)). Vacancy appointments shall be made in the same manner as the original appointments.

2. The Board shall select nine of its members as an Executive Board of whom, not more than five may be State election officials; not more than five may be local election officials; and not more than five may be members of the same political party. Members of the Executive Board shall serve two-year terms and may not serve more than three consecutive terms. Of the initial Executive Board, three members shall serve for one term; three shall serve for two consecutive terms; and three shall serve for three consecutive terms, as determined by lot at the time the members are first appointed. (HAVA title II, section 213(c).)

Administrative Provisions

1. The Board will report to the EAC through the Advisory Committee Management Officer pursuant to 5 U.S.C. App. 1 section 8(b). This officer shall be a member of the EAC staff designated by the Chairman of the EAC.

2. Pursuant to HAVA, the Standards Board shall meet: (1) Not less frequently than once every year for purposes of voting on the voluntary voting system guidelines referred to the Board; (2) not less frequently than once every 2 years for purposes of selecting the Executive Board; and (3) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with Title II. In addition, pursuant to the Board's bylaws, the Board will meet either on an annual basis or as otherwise requested by EAC to address the Board's responsibilities under HAVA and attend to other issues presented by EAC.

3. The EAC will provide clerical and other necessary support services to the Board. (HAVA title II, section 215(d).)

4. Members of the Board will not be compensated for their services but will be reimbursed for travel expenses and subsistence. (HAVA title II, section 215(e).)

5. The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government. (HAVA title II, section 215(c).)

6. The annual cost for operating the Board is estimated at $352,256.00 which includes one quarter staff year for support services.

7. The Board may establish such committees of its members as may be necessary subject to the provisions of the law.

8. The Board may, by simple majority vote, adopt resolutions and make recommendations. Such resolutions and recommendations will, however, be only advisory to the EAC and will be restricted to the EAC's activities described in title II, section 212 of the Help America Vote Act of 2002.

9. The EAC will provide liaison services between the Board and the Advisory Panel Secretariat as required by the Federal Advisory Committee Act.

Duration

While the duration of the Board is continuing, the Charter shall be renewed every two years from the date of the filing.

Dated: October 27, 2008.

Commissioner Gineen Beach,

DFO, U.S. Election Assistance Commission.

[FR Doc. E8–26144 Filed 10–31–08; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension; Correction

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments; Correction.

SUMMARY: The Department of Energy (DOE) published a document in the **Federal Register** of September 18, 2008, announcing the submission of an information request to the OMB for the Foreign Travel Management System (FTMS). This document corrects errors in that notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Julie Squires at *julie.squires@hq.doe.gov.*

Correction

In the **Federal Register** of September 18, 2008, in FR Doc. E8–21825, please make the following corrections:

On page 54154, second column, under the heading **SUMMARY**, the first sentence is corrected to read: The Department of Energy (DOE) invites public comment on a proposed collection of information for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

On page 54154, third column, under the heading **SUPPLEMENTARY INFORMATION**, (1) should read as OMB New and (3) should read as *Type of Review:* New.

Issued in Washington, DC, on October 28, 2008.

Julie Squires,

Acting Director, Office of International Travel and Exchange Visitor Programs.

[FR Doc. E8–26138 Filed 10–31–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–10–000]

Dominion Transmission, Inc.; Notice of Application

October 27, 2008.

Take notice that on October 15, 2008, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, VA 23219, filed an application in Docket No. CP09–10–000, pursuant to section 7(c) of the Natural Gas Act (NGA), requests permission and approval to construct, install, own, operate and maintain certain facilities located in McKean, Elk, Armstrong and Westmoreland Counties, Pennsylvania. Specifically, DTI seeks Commission authorization of its Rural Valley Project (Project) pursuant to which DTI will provide firm transportation service for a Maximum Daily Transportation Quantity (MDTQ) of 57,500 dekatherms per day (Dth/d), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Matthew R. Bley, Manager, Gas Transmission Certificates, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, VA 23219, *telephone:* (804) 819–2877, *facsimile:* (804) 819–2064 and *e-mail: Matthew.R.Bley@dom.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: November 17, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26084 Filed 10–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP09–6–000, PF07–10–000; Docket Nos. CP09–7–000, PF07–10–000]

LNG Development Company, LLC (d/b/a/ Oregon LNG); Oregon Pipeline Company, LLC; Notice of Applications

October 27, 2008.

Take notice that on October 10, 2008, LNG Development Company, LLC (d/b/a Oregon LNG) (Oregon LNG), 8100 NE Parkway Drive, Suite 165, Vancouver, WA 98662, filed an application in Docket No. CP09–6–000 pursuant to section 3(a) of the Natural Gas Act (NGA), 15 U.S.C. 717b and Parts 153 and 380 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR parts 153 and 380, for authorization to site, construct and operate a liquefied natural gas (LNG) receiving terminal and associated facilities to be located in the town of Warrenton in Clatsop County, Oregon (collectively, the Terminal).

Also take notice that on October 10, 2008, Oregon Pipeline Company, LLC, (Oregon Pipeline Company), 8100 NE Parkway Drive, Suite 165, Vancouver, WA 98662, filed pursuant to section 7(c) of the NGA and Parts 157 and 284 of the Commission's regulations, an application in Docket No. CP09–7–000, for (1) a certificate of public convenience and necessity (i) authorizing Oregon Pipeline Company to construct, own and operate a new natural gas pipeline (Pipeline) and lateral (Lateral) under Part 157, Subpart A of the Commission's regulations, (ii) approving the pro forma Tariff submitted herewith, and (iii) approving the proposed initial rates for service; (2) a blanket certificate authorizing Oregon Pipeline Company to engage in certain self-implementing routine activities under Part 157, Subpart F, of the Commission's regulations; and (3) a blanket certificate authorizing Oregon Pipeline Company to transport natural gas, on an open access and self-implementing basis, under part 284, Subpart G of the Commission's regulations.

Oregon Pipeline proposes to construct an approximate 121-mile long, 36-inch diameter natural gas pipeline. The proposed Pipeline will interconnect the Terminal at the Molalla Gate Station (near Molalla, Oregon) with other natural gas pipelines including the intrastate Northwest Natural Gas Co. (NW Natural) South Mist Pipeline Extension (SMPE) and the interstate natural gas transmission system of Williams Northwest Pipeline Co. The Pipeline will employ a maximum allowable operating pressure of 1,440 pounds per square inch gauge and, depending on customer demand, deliverability of up to 1.5 Bscf/d.

Oregon Pipeline Company also proposes to construct, own and operate a 9.5-mile long, 24-inch diameter pipeline lateral that will tap off the Pipeline near milepost 51 and run in an easterly direction to where it will connect to the NW Natural SMPE, and possibly to the NW Natural South Mist Feeder Pipeline.

Any questions regarding the applications should be directed to Peter Hansen, LNG Development Company, LLC, 8100 NE Parkway Drive, Suite 165, Vancouver, WA 98662, (503) 298–4967, *peterh@oregonlng.com* or Lisa M. Tonery, Fulbright & Jaworski L.L.P., 666 Fifth Avenue, New York, NY 10103, (212) 318–3009, *ltonery@fulbright.com*.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

On June 19, 2007, the Commission staff granted Oregon LNG's and Oregon Pipeline Company's request to utilize the Pre-Filing Process and assigned Docket No. PF07–10–000 to staff activities involved with the Orgeon LNG Terminal and Oregon Pipeline Company's projects. Now as of the filing the October 10, 2008 application, the

Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket Nos. CP09–6–000 and CP09–7–000, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: November 17, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26082 Filed 10–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–5–000]

Cargill Power Markets, LLC, Complainant, v. Central Maine Power Company, NSTAR Electric, The United Illuminating Company, Respondents; Notice of Complaint

October 27, 2008.

Take notice that on October 24, 2008, Cargill Power Markets, LLC (CPM), tendered for filing a Complaint against Central Maine Power Company (CMP), NSTAR Electric Company (NSTR), and The United Illuminating Company (UICO), (collectively the Schedule 20A Service Providers (SSPs)), pursuant to Rules of Practice and Procedure, 18 CFR 385.206 and section 206 of the Federal Power Act. CPM also requests fast track processing the Commission.

CPM states that on November 1, 2007, CPM submitted several Transmission Service Requests for long-term firm point-to-point transmission service which interconnect the Independent System Operator New England, Inc's grid to Hydro-Quebec TransEnergie. Through the SSPs' allocation process, CPM was awarded long-term firm point-to-point service and executed multiple transmission service agreements. CPM sought to renew its transmission service agreements in accordance with Order No. 888's rollover provisions. CPM's rollover requests were denied. In response to those denials, CPM contracted the SSPs to ascertain why long-term firm service entered into the fall of 2007 could not be rolled over. The SSPs responded that the Order No. 890 rollover provisions applied to CPM's transmission service, and that since all of CPM's service agreements were for less than five years duration, they were not eligible for rollover.

However, in Order No. 890-B, the Commission clarified that the Order No. 890 rollover reforms were not to be implemented until after acceptance of a Transmission Provider's Attachment K. All of CPM's transmission service was awarded prior to the effectiveness of the SSP's Attachment K. Therefore, CPM respectfully requests the Commission to grant its Complaint and direct CMP, NSTR and UICO to grant rollover right to CPM.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 7, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8–26083 Filed 10–31–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–29–000]

Mississippi Hub, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed MS HUB Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Site Visit

October 27, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed MS HUB Expansion Project involving construction and operation of facilities by Mississippi Hub, LLC (MS HUB) in Simpson, Jefferson Davis and Covington Counties, Mississippi. The EA will be used by the Commission in its decision-making process to determine whether or not to authorize the project under section 7 of the Natural Gas Act.

This notice explains the scoping process we [1] will use to gather environmental input from the public and interested agencies, and summarizes the project review process for the FERC. Your input will help determine which issues need to be evaluated in the EA. Details on how to submit comments during the scoping period are provided in the Public Participation section of this notice. Please note that the scoping period will close on December 3, 2008.

This notice is being sent to potentially affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a MS HUB company representative about survey permission and/or the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the natural gas company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Project

MS HUB proposes to expand the working gas capacity of its currently authorized salt dome natural gas storage facility in Mississippi from 12 billion standard cubic feet (Bcf) to 15 Bcf and construct two new natural gas pipelines in an extension of its South Pipeline Corridor. Specifically, MS HUB seeks authority to construct and operate:

- Two solution-mined salt dome caverns, expanded from a working gas capacity of 6.0 Bcf to 7.5 Bcf each;
- Approximately 14.2 miles of 24-inch-diameter natural gas pipeline, extending from the gas storage facility to an interconnect with the Southeast Supply Header (SESH) pipeline;
- Approximately 22.6 miles of 30-inch-diameter natural gas pipeline, extending from the gas storage facility to an interconnect with a Transcontinental Gas Pipe Line (Transco) pipeline;
- Aboveground tie-in and metering facilities at each interconnect site;
- Associated access roads; and
- An additional 15,800 horsepower (hp) of compression at the gas storage site.

The general location of the project facilities is shown in Appendix 1.[2]

Construction of the proposed facilities would require approximately 340 acres of land. Following construction, approximately 136 acres would be maintained as new pipeline right-of-way and aboveground facility sites. The remaining acreage would be restored and allowed to revert to its former use. If approved, MS HUB proposes to begin construction of the project in August 2009.

The EA Process

We are preparing an EA to comply with the National Environmental Policy Act of 1969 (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes MS HUB's proposal. NEPA also requires us to discover and address the public's concerns about proposals that require federal authorizations. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues.

By this notice, we are requesting public comments on the scope of the issues to be addressed in the EA. All comments received will be considered during preparation of the EA. We are also asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Although no formal application has been filed with the Commission, the FERC staff has initiated its review of the project under its NEPA Pre-filing Process to encourage the early involvement of stakeholders and to identify and resolve issues before an application is filed. The purpose of the Pre-filing Process is to seek public and agency input early in the project planning phase and encourage involvement by interested stakeholders in a manner that allows for the early identification and resolution of environmental issues. We will work with all interested stakeholders to identify and attempt to address issues before MS HUB files its application with the FERC.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project, under the general headings of geology and soils; land use; water resources, fisheries, and wetlands; cultural resources; vegetation and wildlife; threatened and endangered species; air quality and noise; safety and reliability; and cumulative impacts. The EA will also evaluate reasonable alternatives to the proposed project, and make recommendations on how to

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies; newspapers; libraries; interested individuals who return the Mail List Retention Form in Appendix 3; and the Commission's official service list for this proceeding. An additional comment period may be allotted for review when the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by MS HUB. This preliminary list of issues may be changed based on your comments and our analysis.

- Federally listed endangered or threatened species may occur in the proposed project area.
- Construction impacts to wetlands located in the proposed project area.
- Construction activities near residences and structures.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the MS HUB Expansion Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before December 3, 2008.

For your convenience, there are three methods which you can use to submit your written comments to the Commission. In all instances please reference the project docket number (PF08–29–000) with your submission. The three methods are:

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister*.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

Label one copy of the comments for the attention of Gas Branch 3, PJ–11.3.

The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov*.

Once MS HUB formally files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may *not* request intervenor status at this time. You must wait until a formal application is filed with the Commission. MS HUB currently plans to file its formal application in March 2009.

Public Meetings and Site Visits

As part of the Pre-filing Process review, FERC staff will participate in a public open house sponsored by MS HUB in the project area on November 18, 2008 to explain the environmental review process to interested stakeholders and take comments about the project. MS HUB will mail out a separate invitation regarding this public open house event to all affected landowners and other interested parties. For additional information regarding the open house, please contact MS HUB directly at 1–866–429–5289.

In addition, on November 19, 2008, the FERC staff will conduct a public site visit to view the proposed facility locations and pipeline route. Examination will be by automobile and on foot. Representatives of MS HUB will be accompanying the FERC staff. All interested parties may attend. Those planning to attend must provide their own transportation and should meet at the location and time described below.

MS HUB's open house and the FERC's site visit are designed to provide another opportunity to offer comments on the proposed Project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues that they believe should be addressed in the EA. The open house and site visit are scheduled as follows:

Date	Location
MS HUB Open House, Tuesday, November 18th, 7 p.m. to 8:30 p.m. (CST).	M. G. Dyess Inc., 7159 Hwy 35 South, Bassfield, MS 39421 (approximately 1 mile south of the intersection of Hwy 42 and Hwy 35; M. G. Dyess facility on west side of Hwy 35).
FERC Site Visit, Wednesday, November 19th at 9 a.m. to 1 p.m. (CST)	Meet at 9 a.m. at the: Wal-Mart Super Center, 1625 Simpson Hwy #49, Magee, MS 39111.

For additional information, you may contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations

of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

We may mail the EA for comment. If you are interested in receiving the EA for review and/or comment, please return the Mail List Retention Form (Appendix 3). In addition, all individuals who provide written comments to the FERC will remain on our environmental mailing list for this project. If you do not return the Mail List Retention Form or provide written comments, you will be taken off the mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field (e.g., PF08–29). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Fact sheets prepared by the FERC are also available for viewing on the FERC Internet Web site (*www.ferc.gov*), using the ''For Citizens'' link. The fact sheet, ''Guide to Electronic Information at FERC,'' provides instructions on how to stay informed and participate in the Commission's proceedings.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, MS HUB will be updating its Web site at *http://www.MississippiHub.com* to share news and updates as the environmental review of its project proceeds.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26081 Filed 10–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–107–000]

KODA Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 27, 2008.

This is a supplemental notice in the above-referenced proceeding of KODA Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 26, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–26114 Filed 10–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–109–000]

Scotia Capital Energy Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 27, 2008.

This is a supplemental notice in the above-referenced proceeding of Scotia Capital Energy Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 26, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the

eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–26113 Filed 10–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Sam Rayburn Dam Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2008 Power Repayment Studies that show the need for an increase in annual revenues to meet cost recovery criteria. Such increased revenues are required primarily due to increases in U.S. Army Corps of Engineers' operations and maintenance estimates. The Administrator has developed a proposed Sam Rayburn Dam rate schedule, which is supported by a power repayment study, to recover the required revenues. Beginning January 1, 2009, the proposed rates would increase annual revenues approximately 14.3 percent from $3,456,696 to $3,949,872.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end December 3, 2008. A combined Public Information and Comment Forum is scheduled to be held in Tulsa, Oklahoma at 1 p.m. central time on November 18, 2008, if requested.

ADDRESSES: If the Forum is requested, it will be held in Southwestern's offices, Room 1500, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. James K. McDonald, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6690, *jim.mcdonald@swpa.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977. Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2 entitled Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at Title 10, part 903, Subpart A of the Code of Federal Regulations (10 CFR part 903). Procedures for the confirmation and approval of rates for the Federal Power Marketing Administrations are found at Title 18, part 300, Subpart L of the Code of Federal Regulations (18 CFR part 300).

Southwestern markets power from 24 multi-purpose reservoir projects, with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are Southwestern's transmission facilities that consist of 1,380 miles of high-voltage transmission lines, 24 substations, and 46 microwave and VHF radio sites. Costs associated with the Robert D. Willis and Sam Rayburn Dams, two projects that are isolated hydraulically, electrically, and financially from the Integrated System, are repaid by separate rate schedules.

Following Department of Energy guidelines, Southwestern's Administrator prepared a Current Power Repayment Study using the existing Sam Rayburn Dam rate. The Study indicates that Southwestern's legal requirement to repay the investment in the power generating facility for power and energy marketed by Southwestern will not be met without an increase in revenues. The need for increased revenues is due primarily to increases in Corps of Engineers' operations and maintenance expenses at the project. The Revised Power Repayment Study shows that an increase in annual revenue of $493,176 (a 14.3 percent increase), beginning January 1, 2009, is needed to satisfy repayment criteria.

Opportunity is presented for Southwestern customers and other interested parties to receive copies of the Sam Rayburn Dam Power Repayment Studies and the proposed rate schedule. If you desire a copy of the Sam Rayburn Dam Power Repayment Data Package with the proposed Rate Schedule, submit your request to the Director, Resources and Rates, Office of Corporate Operations, Southwestern Power Administration, One West Third Street, Tulsa, OK 74103, (918) 595–6680 or via e-mail to *swparates@swpa.gov.*

A Public Information and Comment Forum (Forum) is tentatively scheduled to be held on November 18, 2008, to explain to customers and interested parties the proposed rate and supporting studies. The proceeding will be transcribed, if held. A chairman, who will be responsible for orderly procedure, will conduct the Forum. Questions concerning the rate, studies, and information presented at the Forum will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing. However, questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices.

Persons interested in attending the Forum should indicate in writing by letter, e-mail, or facsimile transmission (918–595–6656) by November 10, 2008, their intent to appear at such Forum. Should no one indicate an intent to attend by the above-cited deadline, no such Forum will be held.

Persons interested in speaking at the Forum should indicate in writing by letter, e-mail, or facsimile transmission (918–595–6656) at least seven (7) calendar days prior to the Forum so that a list of speakers can be developed. The chairman may allow others to speak if time permits.

A transcript of the Forum will be made. Copies of the transcripts may be obtained directly from the transcribing service for a fee. Copies of all documents introduced will also be

available from the transcribing service for a fee.

Written comments on the proposed Sam Rayburn Dam Rate are due on or before December 3, 2008. Five copies of the written comments should be submitted to James K. McDonald, Assistant Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103.

Following review of the oral and written comments and the information gathered during the course of the proceedings, the Administrator will submit the final Sam Rayburn Dam Rate Proposal, and Power Repayment Studies in support of the proposed rate to the Deputy Secretary of Energy for confirmation and approval on an interim basis, and subsequently to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increase before making a final decision.

Dated: October 21, 2008.

Jon C. Worthington,

Administrator.

[FR Doc. E8–26137 Filed 10–31–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2005–0001; FRL–8737–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Administrative Requirements for Assistance Programs; EPA ICR No. 0938.16, OMB Control Number 2030–0020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on April 30, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 2, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2005–0001, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OARM–2005–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: William G. Hedling, Office of Grants and Debarment, National Policy, Training and Compliance Division, Mail Code: 3903R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–564–5377; *fax number:* (202) 565–2499; *e-mail address: Hedling.William@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OARM–2005–0001, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information Docket is 202–566–1752.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments

from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Institutions of higher education, hospitals, and other not-for-profit institutions; State, local, and Indian tribal governments.

Title: General Administrative Requirements for Assistance Programs.

ICR numbers: EPA ICR No. 0938.16, OMB Control No. 2030–0020.

ICR status: This ICR is scheduled to expire on April 30, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The information is collected from applicants/recipients of EPA assistance to monitor adherence to the programmatic and administrative requirements of the Agency's financial assistance program. It is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA's General Regulation for Assistance Programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). 40 CFR part 30, ''Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations,'' includes the management requirements for potential grantees from non-profit organizations. 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' includes the management responsibilities for potential State and local government grantees. These regulations include only those provisions mandated by statute, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. This ICR combines all of these requirements under OMB Control Number 2030–0020. The information required by these regulations will be used by EPA award officials to make assistance awards and assistance payments and to verify that the recipient is using Federal funds appropriately to comply with OMB Circulars A–21, A–87, A–102, A–110, A–122, A–128, and A–133, which set forth the pre-award, post-award, and after-the-grant requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated Average Annual Number of Recipients: 6,105.

Estimated Annual Frequency of Response: On occasion, quarterly, and annually.

Estimated Total Annual Respondent Burden Hours: 108,887 hours.

Estimated Total Annual Respondent Costs: $5,573,132. This includes an estimated labor cost of $5,573,132 and $0 for capital investment or maintenance and operational costs.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 29, 2008.

Howard Corcoran,

Director of the Office of Grants and Debarment.

[FR Doc. E8–26170 Filed 10–31–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8736–8]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended; AuClair Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice, request for public comments.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Agreement for Recovery of Past Response Costs (''Agreement,'' Region 9 Docket No. 9–2008–16) pursuant to Section 122(h) of CERCLA concerning the AuClair

Superfund SITE (the ''Site''), located on the Torres Martinez Desert Cahuilla Indian Reservation, Riverside County, California. The settling party is Mr. George Stanley Auclair Jr. (''settling party''). In the Agreement, the ''Settling Party'' will fully reimburse the United States up to $627,022.00 for response costs incurred at the Site. The Agreement provides the ''Settling Party'' with a covenant not to sue for these response costs, and contribution protection. For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed Agreement. The Agency's response to any comments received will be available for public inspection at EPA's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before December 3, 2008.

ADDRESSES: The proposed Agreement may be obtained from Letitia Moore in the Office of Regional Counsel, telephone (415) 972–3928. Comments regarding the proposed Agreement should be addressed to Letitia Moore at the U.S. Environmental Protection Agency (ORC–3), 75 Hawthorne Street, San Francisco, California 94105, and should reference the AuClair Superfund Site, and Region IX Docket No. 9–2008–0026.

FOR FURTHER INFORMATION CONTACT: Letitia Moore, Office of Regional Counsel, (415) 972–3928, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: October 16, 2008.

Keith A. Takata,

Director, Superfund Division, Region 9.

[FR Doc. E8–26091 Filed 10–31–08; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 13, 2008, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- October 9, 2008

B. New Business

- Market Emergency Standby Resolution

C. Reports

- Office of Management Services Quarterly Report

Dated: October 30, 2008.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E8–26258 Filed 10–30–08; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 28, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before January 2, 2009. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov* and/or to *Cathy.Williams@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0686.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Form No.: FCC Form 214.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents/Responses: 1,650 respondents; 3,603 responses.

Estimated Time per Response: 1 hour—6,056 hours.

Frequency of Response: On occasion, annual and quarterly reporting requirements; third party disclosure and recordkeeping requirements.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for Part 1 of this information collection is contained in 47 U.S.C 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e). The statutory authority for Part 63 of this information collection is contained in Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, and 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403 and 571. The statutory authority for this information collection is also contained in the Cable Landing License Act, Executive Order 10530 and the Coastal Zone Management Act, 16 U.S.C. 1456.

Total Annual Burden: 148,053 hours.

Annual Cost Burden: $16,162,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection will be submitted to Office of Management and Budget (OMB) as a revision after this 60-day comment period has ended in order to obtain the full three-year OMB clearance. This collection will be revised to reflect more accurate and true burden estimates and to clarify and clearly state the rule sections that are included under OMB Control No. 3060–0686.

The collection of information is used by the Commission staff in carrying out its duties under the Communications Act. The information collections pertaining to Part 1 of the rules are necessary to determine whether the Commission should grant a license for proposed submarine cables landing in the United States. Pursuant to Executive Order No. 10530, the Commission has been delegated the President's authority under the Cable Landing License Act to grant cable landing licenses, provided that the Commission obtains the approval from the State Department and seeks advice from other government agencies as appropriate. The information collections pertaining to Part 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity.

If the collections are not conducted or are conducted less frequently, applicants will not obtain the authorizations necessary to provide telecommunications services, and the Commission will be unable to carry out its mandate under the Communications Act of 1934 and the Cable Landing License Act. In addition, without the information collections, the United States would jeopardize its ability to fulfill the U.S. obligations as negotiated under the World Trade Organization (WTO) Basic Telecom Agreement because these collections are imperative to detecting and deterring anticompetitive conduct. They are also necessary to preserve the Executive Branch agencies' and the Commission's ability to review foreign investments for national security, law enforcement, foreign policy, and trade concerns.

OMB Control Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer's Act (SHVA).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents/Responses: 848 respondents; 250,000 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collections is contained in the Satellite Home Viewer Act, 17 U.S.C. 119. The Satellite Home Viewer Act is an amendment of the Copyright Act.

Total Annual Burden: 125,000 hours.

Annual Cost Burden: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: 47 CFR 73.686 describes a method for measuring signal strength at a household so that the satellite and broadcast industries and consumers would have a uniform method for making an actual determination of the signal strength that a household received. The information gathered as part of the Grade B signal strength tests will be used to indicate whether consumers are ''unserved'' by over-the-air network signals. The written records of test results will be made after testing and predicting the strength of a television station's signal. Parties impacted by the test results will be consumers; parties using the written test results will primarily be the satellite and broadcasting industries.

OMB Control No.: 3060–0901.

Title: Reports of Common Carriers and Affiliates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 20 respondents; 1,200 responses.

Estimated Time per Response: 5 hours.

Frequency of Response: On occasion reporting requirement; third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 1, 2, 4(i), 201, 203, 205, 214, 303(r) and 309 of the Communications Act of 1934, as amended; 47 U.S.C. Sections 151, 152, 154(i), 201, 205, 214, 303(r), and 309.

Total Annual Burden: 6,000 hours.

Annual Cost Burden: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection will be submitted to Office of Management and Budget (OMB) as an extension (no change in requirements) after this 60 day comment period has ended in order to obtain the full three year OMB clearance. The information is used by Commission staff to monitor the operating agreements of U.S. carriers and their foreign correspondents that possess market power, and, in particular, to monitor the international accounting rates of such carriers to ensure consistency with Commission policies and the public interest. The information also enables the Commission to preclude one-way bypass and safeguard its international settlements policy. The Commission's policies and objectives would be thwarted if the collections were conducted less frequently.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–26163 Filed 10–31–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 28, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it

displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 2, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0944.

Title: Review of Commission Consideration of Applications Under the Cable Landing License Act.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 25 respondents; 200 responses.

Estimated Time per Response: 5–9 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in the Cable Landing License Act, Executive Order 10530 and the Coastal Zone Management Act, 16 U.S.C. 1456.

Total Annual Burden: 1,001 hours.

Annual Cost Burden: $402,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection will be submitted to Office of Management and Budget (OMB) as an extension (no change in requirements) after this 60 day comment period has ended in order to obtain the full three year OMB clearance.

The information will be used by the Commission staff in carrying out its duties under the Cable Landing License Act and the Coastal Zone Management Act of 1972. The information collections pertaining to Part 1 of the rules are necessary to determine whether the Commission should grant a license for proposed submarine cables landing in the United States. Pursuant to Executive Order No. 10530, the Commission has been delegated the President's authority under the Cable Landing License Act to grant cable landing licenses, provided that the Commission must obtain the approval of the State Department and seek advice from other government agencies as appropriate.

The frequency of filing applications under the Cable Landing License Act will be determined largely by the applicants seeking to construct and operate a submarine cable. If the collection is not conducted or is conducted less frequently, applicants will not obtain the authorizations necessary to provide telecommunications services, and the Commission will be unable to carry out its mandate under the Cable Landing License Act, Executive Order 10530 and the Coastal Zone Management Act of 1972. In addition, without the collection, the United States would jeopardize its ability to fulfill the U.S. obligations as negotiated under the World Trade Organization (WTO) Basic Telecom Agreement because these information collection requirements are imperative to detecting and deterring anticompetitive conduct. They are also necessary to preserve the Executive Branch agencies and the Commission's ability to review foreign investments for national security, law enforcement, foreign policy, and trade concerns.

OMB Control No.: 3060–1014.

Title: Ku-band NGSO FSS.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5 respondents; 45 responses.

Estimated Time per Response: 1–4 hours.

Frequency of Response: Annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 307, 309, 332, and 701–744.

Total Annual Burden: 140 hours.

Annual Cost Burden: $176,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension (no change in requirements) after this 60 day comment period has ended in order to obtain the full three year OMB clearance.

The information collection requirements (annual filings by licensees of reports on the status of their space station construction and launch) accounted for in this collection are necessary to ensure that prospective licensees in the Non-geostationary (NGSO) Fixed Satellite Service (FSS) follow their service rules. Without such information collection requirements, many existing radio services, both satellite and terrestrial, could potentially be interrupted by interference caused by NGSO FSS systems on the same frequencies.

OMB Control No.: 3060–1095.

Title: Surrenders of Authorizations for International Carrier, Space Station and Earth Station Licensees.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 306 respondents; 306 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. The statutory authority for this information collection is contained in Sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. Section 154(i), 157(a), 161, 303(c), 303(f), 303(g), and 303(r).

Total Annual Burden: 306 hours.

Annual Cost Burden: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension (no change in requirements) after this 60 day comment period has ended in order to obtain the full three year OMB clearance.

Licensees file surrenders of authorizations with the Commission on a voluntary basis.

This information is used by Commission staff to issue Public Notices to announce the surrenders of authorization to the general public. The

Commission's release of Public Notices is critical to keeping the general public abreast of the licensees' discontinuance of telecommunications services.

Without this collection of information, licensees would be required to submit surrenders of authorizations to the Commission by letter which is more time consuming than submitting such requests to the Commission electronically. In addition, Commission staff would spend an extensive amount of time processing surrenders of authorizations received by letter.

The collection of information saves time for both licensees and Commission staff since they are received in MyIBFS electronically and include only the information that is essential to process the requests in a timely manner. Furthermore, the E-filing module expedites the Commission staff's announcement of surrenders of authorizations via Public Notice.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–26178 Filed 10–31–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 08–214; DA 08–2269]

Herring Broadcasting, Inc. d/b/a WealthTV, Complainant v. Time Warner Cable Inc., Defendant; File No. CSR–7709–P; Herring Broadcasting, Inc. d/b/a WealthTV, Complainant v. Bright House Networks, LLC, Defendant; File No. CSR–7822–P; Herring Broadcasting, Inc. d/b/a WealthTV, Complainant v. Cox Communications, Inc., Defendant; File No. CSR–7829–P; Herring Broadcasting, Inc. d/b/a WealthTV, Complainant v. Comcast Corporation, Defendant; File No. CSR–7907–P; NFL Enterprises LLC, Complainant v. Comcast Cable Communications, LLC, Defendant; File No. CSR–7876–P; TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network, Complainant v. Comcast Corporation, Defendant; File No. CSR–8001–P

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document designates six program carriage complaints for a hearing to resolve the factual disputes with respect to the claims and to return a recommended decision and a recommended remedy, if necessary, to the Commission by December 9, 2008.

DATES: Each party to an above-captioned proceeding, in person or by its attorney, shall file with the Commission, by October 17, 2008, a written appearance stating that the party will appear on the date fixed for hearing and present evidence on the issues specified herein. Each party to an above-captioned proceeding must submit to the Commission, in writing within ten days of this *Order* (*i.e.*, by October 20, 2008), their respective elections as to whether each wishes to proceed to Alternative Dispute Resolution. In each above-captioned proceeding, the Administrative Law Judge, within 60 days of this Order (*i.e.*, by December 9, 2008), will resolve all factual disputes and submit a recommended decision and remedy, if appropriate.

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

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Steven Broeckaert, *Steven.Broeckaert@fcc.gov*, or David Konczal, *David.Konczal@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Hearing Designation Order, DA 08–2269, adopted and released on October 10, 2008, and the Erratum thereto, adopted and released on October 15, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis of the Order

I. WealthTV Complaints

1. WealthTV is a video programming vendor as defined in Section 616(b) of the Act and Section 76.1300(e) of the Commission's rules. WealthTV focuses on ''inspirational and aspirational programming about prosperous and fulfilling lifestyles.'' WealthTV states that it is a ''truly independent stand-alone programming service'' and is not supported by or affiliated with any MVPD, telephone company, or broadcaster. WealthTV is currently carried by over 75 MVPDs.

2. WealthTV had filed program carriage complaints against Time Warner Cable Inc. (''TWC''), Bright House Networks, LLC (''BHN''), Cox Communications, Inc. (''Cox''), and Comcast Corporation (''Comcast''). WealthTV asks the Commission to order TWC, BHN, Cox, and Comcast to provide WealthTV carriage on all TWC, BHN, Cox, and Comcast systems without delay, pursuant to the terms of a carriage agreement similar to that accorded to MOJO. To the extent one or more of the systems claim to lack capacity to add an additional channel, WealthTV asks the Commission to order the system to delete an affiliated programming service to accommodate the addition of WealthTV.

3. We note that, at the time WealthTV requested carriage, the defendants carried MOJO in the relevant cable systems. Although iN DEMAND recently announced that MOJO will cease operations on December 1, 2008, this does not render moot or discredit WealthTV's discrimination claim. The fact that MOJO will cease operations in the future is not relevant to the issue of whether the defendants engaged in unlawful discrimination during the period that WealthTV sought carriage. Our conclusion is consistent with the Commission's finding in other contexts that steps taken by a licensee following a violation do not eliminate the licensee's responsibility for the period during which the violation occurred. In addition, if carriage of WealthTV is ultimately required, the fact that the defendants will no longer be carrying MOJO on the relevant cable systems indicates that they will have a vacant channel on which to accommodate WealthTV.

A. WealthTV v. TWC

4. After reviewing the pleadings and supporting documentation filed by the parties, we find that WealthTV has established a *prima facie* showing of discrimination under Section 76.1301(c). TWC is an MVPD and the second largest cable operator in the nation as measured by number of subscribers. TWC is affiliated with MOJO, a video programming vendor. According to TWC, MOJO's orientation is ''exclusively male'' and its principal programming consists of sports, movies,

music concerts, and reality series. On May 7, 2007, WealthTV provided TWC with a pre-filing notice pursuant to Section 76.1302(b) of the Commission's rules informing TWC of its intent to file a program carriage complaint. On December 20, 2007, WealthTV filed its complaint, alleging that TWC violated Section 76.1301(c) by refusing to carry WealthTV while granting carriage to its affiliated MOJO service.

1. Background

5. WealthTV states that it has been seeking carriage on TWC systems since prior to its launch in June 2004. WealthTV explains that it proposed to provide its high definition (''HD'') video on demand (''VOD'') service to TWC free of charge provided that TWC grant it a ''hunting license'' and commit to launch WealthTV in its linear line-up in one TWC system. TWC rejected this proposal because it was unwilling to commit to a linear launch on even one system. In December 2007, TWC offered a compromise whereby it agreed not to launch WealthTV's free HD VOD service until after it launched WealthTV in its linear line-up in one system. According to TWC, this proposal was meant to address WealthTV's concern that TWC could launch its free HD VOD service without ever launching WealthTV on a linear basis. WealthTV rejected this proposal because it still did not guarantee a linear launch in even one system. TWC contends that it offered WealthTV a hunting license that was similar to the deals it has offered to dozens of other programmers, including some of its affiliated programmers, and that WealthTV has accepted a hunting license from other MVPDs that have no ownership interest in MOJO, such as Charter. As WealthTV explains, however, its agreement with Charter guarantees a linear launch in a set number of systems, whereas TWC refused to commit to linear carriage in even one system. Moreover, WealthTV states that TWC has launched MOJO on a nationwide basis while it has offered WealthTV only a hunting license, thereby demonstrating TWC's discriminatory treatment. WealthTV also states that a hunting license with TWC is meaningless given the reluctance of TWC's corporate programming group to agree to carriage of WealthTV even if individual systems desire to carry the network. In its Motion to Strike, TWC states that, after the filing of the WealthTV complaint, it acceded to WealthTV's demands and proposed a hunting license coupled with a firm commitment for linear carriage of WealthTV on TWC's San Antonio system. In its Reply, WealthTV admits that discussions between TWC and WealthTV have continued after the filing of the Complaint, but states that it cannot address these discussions because the Commission's rules require a Reply to be responsive to matters contained in the Answer and not contain new matters.

2. Similarly Situated

6. WealthTV has provided the following evidence that MOJO is ''substantially similar to WealthTV'' with respect to programming, target demographic (affluent males aged 25 to 49), target audience, look and feel, targeted programming theme, and target advertisers.

7. Similar programming. WealthTV provides examples of similar programming that both WealthTV and MOJO offer, regarding topics such as wine, automobiles, sports interviews, food, and electronics. For example, in June 2004, WealthTV launched Taste! The Beverage Show, which focuses on educating viewers about wine and spirits; in April 2007, MOJO launched Uncorked, which focuses on the same subject matter. In June 2004, WealthTV launched Wealth on Wheels, which focuses on the latest trends in automotive technology; in August 2007, MOJO launched Test Drive, which focuses on the same subject matter. In June 2004, WealthTV launched Charlie Jones, Live to Tape, which features interviews of sports figures; MOJO shows Timeless, which also features interviews of sports figures. In June 2004, WealthTV launched Taste of Life, which educates viewers about behind the scenes experiences with travel, spirits, and food; in June 2006, MOJO launched After Hours, which focuses on a behind the scenes look at Los Angeles restaurants. In April 2005, WealthTV launched Innov8, which educates viewers about new ''gadgets and gizmos''; in December 2006, MOJO launched Geared Up, which focuses on high-end electronics and technology. WealthTV also provides an affidavit from Jedd Palmer, a consultant with more than twenty-five years of experience in the cable industry, who reviewed the programming schedules of MOJO and WealthTV and concludes that ''the overwhelming majority of the programming on both networks is the same, or very, very similar, in subject, type, feel, look and target audience.'' We conclude that the Palmer Declaration adequately set forth the basis for its conclusions.

8. Similar target demographics. WealthTV provides evidence that WealthTV and MOJO both are focused on the same target demographic—affluent males aged 25 to 49. WealthTV provides the results of a survey demonstrating that the demographics of WealthTV's viewers are affluent males aged 25 to 49. We find that the survey results set forth in the Kersey Declaration adequately set forth the basis for its conclusions. The results of the survey indicate that 71 percent of WealthTV's audience is male and 55 percent have incomes greater than $75,000. TWC provides similar results for MOJO—72 percent of its audience is male and 61 percent have incomes greater than $75,000. WealthTV also provides an excerpt from a 2004 presentation where WealthTV described its programming as geared towards males 25 to 49. WealthTV notes that the CEO of iN DEMAND has stated that MOJO is for ''men making more than $100,000 per year.'' MOJO has also used the term ''active affluents'' to describe its target audience. In his declaration, Jedd Palmer concludes that WealthTV targets the same audience as MOJO based on his review of marketing materials, press releases, and the networks' schedules and programming. Descriptions of WealthTV and MOJO's programming found on their respective Web sites further suggests the two networks offer similar programming.

9. Similar focus on a targeted audience rather than on general entertainment. WealthTV explains that iN DEMAND announced the launch of MOJO in March 2007, almost three years after the launch of WealthTV. WealthTV notes that, upon the launch of MOJO, TWC agreed to offer the channel across all of its systems carrying HD. While TWC claims that the service now known as MOJO was originally launched in 2003 under the name INHD, before the launch of WealthTV, WealthTV provides evidence that MOJO did not result from merely a name change and that MOJO is a targeted programming service whereas INHD was a general entertainment service. WealthTV notes that the CEO of iN DEMAND stated that INHD could not survive as ''general entertainment programming,'' thus INHD was converted into a targeted programming service with similar programming to WealthTV. In his declaration, Jedd Palmer concludes that ''MOJO is not a general entertainment service, but rather a highly targeted niche programming service.''

10. Similar target advertisers. WealthTV explains that it targets the same advertisers as MOJO. WealthTV explains that both WealthTV and MOJO feature programming on wine and spirits and both networks have targeted the same advertising agency for Grey Goose Vodka.

11. TWC disputes that WealthTV and MOJO are similar programming services or that they have similar target demographics. TWC appears to be arguing that a complainant must demonstrate that its programming is identical to an affiliated network in order to demonstrate discrimination. We find that this is a misreading of the program carriage statute and our rules.

3. Differential Treatment

12. WealthTV argues that TWC has treated WealthTV differently than MOJO by carrying MOJO on its systems but refusing to carry WealthTV on those same systems. While TWC claims that it recently offered WealthTV a hunting license coupled with a firm commitment for linear carriage of WealthTV on TWC's San Antonio system, the salient issue for our analysis is that TWC has launched its affiliated MOJO network on a nationwide basis but it has refused to carry WealthTV on the same terms.

4. Harm to Ability to Compete

13. As required by the program carriage statute and our rules, WealthTV has provided evidence that TWC's refusal to carry WealthTV restrains its ability to compete fairly. WealthTV provides evidence that advertisers are not interested in placing advertisements on programming services that are available to fewer than 20 million households. Absent carriage on one or both of the largest cable MSOs, such as TWC or Comcast, a programmer's ability to attract advertisers is impeded and its long-term financial viability is limited. In addition, WealthTV provides evidence that TWC has ''quasi monopolies'' in key markets, such as New York and Los Angeles, that are essential to WealthTV's long-term viability. WealthTV also notes that many MVPDs refuse to carry a programming service that has been denied carriage by TWC. WealthTV explains further that TWC's refusal to carry WealthTV has harmed WealthTV's ability to bargain with advertisers and other cable systems. TWC argues that WealthTV could meet a 20 million subscriber benchmark through carriage agreements with other large MVPDs, including MVPDs with no affiliation with MOJO, such as DIRECTV and DISH Network, but that WealthTV has failed to reach carriage agreements with these MVPDs as well. We reject this claim because it would effectively exempt all MVPDs from program carriage obligations based on the possibility of carriage on other MVPDs. Moreover, the program carriage provision of the Act prohibits an MVPD from discriminating against an unaffiliated programmer regardless of the competition the MVPD faces.

5. Alleged Business and Editorial Justifications for TWC's Refusal to Carry WealthTV

14. TWC offers a number of alleged business and editorial justifications for its refusal to carry WealthTV but to carry MOJO. First, TWC claims that its minority stake in MOJO does not provide a sufficient basis to influence its decision regarding carriage of WealthTV. A determination whether the program carriage rules have been violated does not turn on whether or not TWC has a minority stake in the affiliated programmer, but rather it focuses on the factors we have identified above. Indeed, TWC admits that its interest in MOJO satisfies the attribution threshold, thus the program carriage rules apply to its conduct regarding carriage of MOJO.

15. Second, TWC claims that the video marketplace is competitive and that no MVPD can afford to keep ''a programming service with attractive pricing and content off its systems based on ownership if doing so would cost it subscribers.'' We reject this claim because it would effectively require a program carriage complainant to demonstrate that an MVPD's failure to carry its service will cause subscribers to switch to other MVPDs that do carry the service. This is not a requirement of the program carriage statute or our rules. In addition, because TWC carries an affiliated programming service, MOJO, that provides programming that is substantially similar to WealthTV, there is even less reason for TWC's subscribers to switch to a competitor that carries WealthTV.

16. Third, TWC states that its decision to carry a channel depends on capacity constraints; the proven track record of success of the channel; the experience of the channel's management team; the subscriber interest in the channel; input from TWC's division management; and the terms offered by the channel. TWC argues that WealthTV has no proven audience demand and is led by individuals with no experience in creating a national cable network. WealthTV, on its behalf, has provided evidence demonstrating that it is an established channel with experienced management and proven consumer appeal, as demonstrated by: (i) Its linear carriage on 75 MVPDs to date; (ii) a sampling of e-mails from viewers reflecting their support for the channel; (iii) the interest in the channel expressed by representatives of individual TWC systems; and (iv) the decision of TWC's San Antonio system to launch WealthTV's HD VOD service in March 2007.

17. Fourth, TWC states that it made the same business decision as many other MVPDs, including Direct Broadcast Satellite (''DBS'') operators DIRECTV and DISH Network, that WealthTV did not warrant carriage given the terms it was demanding. WealthTV explains, however, that the decision of DBS operators to refrain from carrying WealthTV is irrelevant because they do not carry MOJO either.

6. Conclusion

18. We conclude that WealthTV has established a *prima facie* showing that TWC has discriminated against WealthTV in violation of the program carriage rules.

B. WealthTV v. BHN

19. After reviewing the pleadings and supporting documentation filed by the parties, we find that WealthTV has established *prima facie* showing of discrimination under Section 76.1301(c). BHN is an MVPD and the sixth largest cable operator in the nation as measured by number of subscribers. BHN is affiliated with MOJO, a video programming vendor. According to BHN, MOJO's orientation is ''exclusively male'' and is principal programming consists of sports, movies, music concerts, and reality series. On May 15, 2007, WealthTV provided BHN with a pre-filing notice pursuant to Section 76.1302(b) of the Commission's rules informing BHN of its intent to file a program carriage complaint. As discussed further below, on March 13, 2008, WealthTV filed its complaint, alleging that BHN violated Section 76.1301(c) by refusing to carry WealthTV while granting carriage to its affiliated MOJO service.

1. Background

20. WealthTV states that it has been seeking carriage on BHN systems since the summer of 2004. WealthTV describes its visits with BHN representatives in leading markets and claims that representatives of several BHN systems, including those in the Tampa Bay market, expressed an interest in carrying WealthTV, especially because Verizon FIOS TV offered WealthTV in both standard digital and HD formats in Tampa Bay. WealthTV claims that Anne Stith, formerly BHN's Director of Product Marketing for the Tampa Division, told WealthTV's President in July 2006 that BHN would like to launch WealthTV as soon as WealthTV completed a deal with TWC. WealthTV also notes that it

was making its service available for free through 2008. BHN and Ms. Stith, however, state that Ms. Stith had no authority to make programming commitments on behalf of BHN and that most programmers understood that BHN was covered by the programming agreements negotiated by TWC. Moreover, Ms. Stith states that her inquiries of WealthTV were purely for purposes of research and that she never made statements indicating that BHN would be interested in carrying WealthTV. When WealthTV's Vice President of Affiliate Relations, John Scaro, contacted BHN's President, Steve Miron, Mr. Miron informed Mr. Scaro that BHN is covered by the programming agreements that TWC negotiates with national networks and that further direct negotiations with BHN would not be an efficient use of time. Based on this, WealthTV concludes that BHN was prepared to carry WealthTV but for the absence of a carriage agreement with TWC. WealthTV states that BHN thus completely refused to negotiate with WealthTV. WealthTV states the BHN is required to comply with the program carriage rules and cannot use its reliance on TWC to negotiate programming agreements as a defense.

2. Similarly Situated

21. WealthTV provides similar evidence submitted in connection with its complaint against TWC purporting to demonstrate that WealthTV and MOJO are similarly situated. BHN notes some general dissimilarities between specific programming on WealthTV and MOJO. BHN appears to be arguing that a complainant must demonstrate that its programming is identical to an affiliated network in order to demonstrate discrimination. We find that this is a misreading of the program carriage statute and our rules.

3. Differential Treatment

22. WealthTV argues that BHN has treated WealthTV differently by carrying MOJO on its systems but refusing to carry WealthTV on those same systems.

4. Harm to Ability To Compete

23. As required by the program carriage statute and our rules, WealthTV has provided evidence that BHN's refusal to carry WealthTV restrains its ability to compete fairly. WealthTV notes that BHN's decision to carry MOJO but to deny carriage to WealthTV provides MOJO with a first mover advantage with respect to the viewers and advertisers each network targets. WealthTV also explains that an independent channel must be available to at least 20 million subscribers in order to attract national advertisers and to achieve financial viability. WealthTV states that the inability to obtain carriage on BHN systems makes it more difficult for independent programmers to reach this level of subscribership. WealthTV also alleges that obtaining carriage in major markets where BHN owns cable systems, such as Tampa and Orlando, is essential for attracting advertisers. According to WealthTV, many MVPDs refuse to carry a programming service that has been denied carriage by TWC and BHN. In addition, WealthTV states that BHN's refusal to carry WealthTV has harmed WealthTV's ability to bargain with advertisers and other cable systems.

24. In response, BHN argues that carriage on its systems is not necessary in order to reach the 20 million subscriber benchmark. The program carriage rules, however, apply to all MVPDs, regardless of their subscriber base. BHN claims that WealthTV could meet this benchmark through carriage agreements with other MVPDs, including MVPDs with no affiliation with MOJO, such as DIRECTV and DISH Network, but that WealthTV has failed to reach carriage agreements with these MVPDs as well. We reject this claim because it would effectively exempt all MVPDs from program carriage obligations based on the possibility of carriage on other MVPDs. Moreover, the program carriage provision of the Act prohibits an MVPD from discriminating against an unaffiliated programmer regardless of the competition the MVPD faces. While BHN asserts that the 20 million subscriber benchmark cannot apply to an HD network such as WealthTV because there are fewer than 20 million HD customers nationwide, WealthTV responds that its HD feed is also available as a downconverted standard definition (''SD'') feed that can be viewed by all subscribers. While BHN notes that WealthTV has been operational for four years despite the lack of a carriage agreement with BHN, we agree with WealthTV that the more pertinent consideration is its ability to compete over the long term absent a carriage agreement with BHN.

5. Alleged Business and Editorial Justifications for BHN's Refusal To Carry WealthTV

25. BHN offers a number of alleged business and editorial justifications for its refusal to carry WealthTV but to carry MOJO. First, BHN claims that its five percent economic interest in MOJO does not provide a sufficient basis to influence its decision regarding carriage of WealthTV. BHN admits, however, that its interest in MOJO satisfies the attribution threshold, thus the program carriage rules apply to its conduct regarding carriage of MOJO.

26. Second, BHN claims that the video marketplace is competitive and that ''customers will take their business elsewhere if BHN fails to offer them desirable services at a fair price.'' We reject this claim because it would effectively require a program carriage complainant to demonstrate that an MVPD's failure to carry the service will cause subscribers to switch to other MVPDs that do carry the service. In addition, because BHN carries its affiliated programming service, MOJO, that provides programming that is substantially similar to WealthTV, there is even less reason for BHN's subscribers to switch to a competitor that carries WealthTV.

27. Third, BHN claims that its negotiations reflect ''sound business and editorial judgment.'' Specifically, BHN states that its decision to carry a channel depends on capacity constraints; whether the channel is carried by competitors; the experience of the channel's management team; the overall product mix of the BHN system; subscriber demand for the channel; input from BHN's division management; and the terms offered by the channel. BHN contends that WealthTV has no proven consumer demand and is managed by individuals with no experience in launching successful networks. WealthTV, for its part, has provided evidence demonstrating that it is an established channel with experienced management and proven consumer appeal, as demonstrated by: (i) Its linear carriage on 75 MVPDs to date; (ii) a sampling of e-mails from viewers reflecting their support for the channel; and (iii) the interest in the channel expressed by representatives of individual BHN systems. WealthTV also provides the results of an independent survey which reports that WealthTV's HD VOD product ranked fourth out of twenty HD services.

28. Fourth, BHN contends that virtually all of the MVPDs that do not carry WealthTV are not affiliated with MOJO, again demonstrating that decisions regarding carriage of WealthTV are not based on affiliation. For example, BHN notes that DBS operators, DIRECTV and DISH Network, do not carry WealthTV. WealthTV explains that the decision of DBS operators to refrain from carrying WealthTV is irrelevant because they do not carry MOJO either. Moreover, WealthTV notes that Verizon, BHN's wireline competitor in Tampa, carries WealthTV but not MOJO. In any event,

we agree with WealthTV that the salient fact is that each owner of the cable-affiliated MOJO network has refused to carry WealthTV, and a discrimination claim requires the Commission to assess why these cable operators have refused to carry WealthTV but have decided to carry MOJO.

6. Conclusion

29. We conclude that WealthTV has established a *prima facie* that BHN has discriminated against WealthTV in violation of the program carriage rules.

C. WealthTV v. Cox

30. After reviewing the pleadings and supporting documentation filed by the parties, we find that WealthTV established a *prima facie* showing of discrimination under Section 76.1301(c). Cox is an MVPD and the third largest cable operator in the nation. Cox is affiliated with MOJO, a video programming vendor. According to Cox, MOJO's orientation is ''exclusively male'' and its principal programming consists of sports, movies, music concerts, and reality series. On May 7, 2007, WealthTV provided Cox with a pre-filing notice pursuant to Section 76.1302(b) of the Commission's rules informing Cox of its intent to file a program carriage complaint. As discussed further below, on March 27, 2008, WealthTV filed its complaint, alleging that Cox violated Section 76.1301(c) by refusing to carry WealthTV while granting carriage to its affiliated MOJO service.

1. Background

31. WealthTV states that it has been seeking carriage on Cox systems since the summer of 2004, but that Cox has refused to negotiate in good faith. WealthTV discusses its visits with representatives of individual Cox systems in leading markets during 2004 and 2005 and claims that some of these systems expressed a strong desire to carry WealthTV. Cox states that its programming negotiations are conducted at the corporate level and provides declarations from representatives of individual Cox systems stating that they informed WealthTV that all carriage decisions are made by Cox's corporate programming department. Cox states that it informed WealthTV at a May 2005 meeting that the interest expressed by a few individual systems was insufficient to justify carriage of WealthTV and that it was denying carriage to WealthTV. WealthTV states that it considered Cox's comments to be a form of bargaining and that Cox did not state that a final decision had been made to deny carriage to WealthTV.

2. Procedural Issues

32. Cox contends that the WealthTV complaint is barred by the program carriage statute of limitations because the complaint does not allege any act by Cox occurring within one year of the Complaint or the pre-filing notice. Rather, according to Cox, the last formal contact between WealthTV and Cox alleged in the complaint occurred no later than a June 7, 2005 letter; thus, Cox claims that the statute of limitations required WealthTV to file its complaint no later than June 7, 2006. We reject Cox's claim for the following reasons. First, WealthTV states that Cox never expressed a final decision to deny carriage to WealthTV and provides evidence that communications between Cox and WealthTV continued after June 2005. To further support its claim that the Complaint was filed in accordance with the statute of limitations, WealthTV explains that it was not until May 2006, one year prior to the pre-filing notice, when Cox refused to carry the multicast stream of a Las Vegas CBS affiliate that proposed to broadcast WealthTV programming. Cox argues, however, that this incident did not involve direct communication between Cox and WealthTV. WealthTV, however, claims that Leo Brennan of Cox-Las Vegas informed WealthTV of this decision in mid-May 2006. Second, WealthTV states that it was not until the launch of MOJO in March 2007 and the failure of subsequent carriage discussions when it became obvious to WealthTV that Cox intended to favor its affiliated MOJO service. Third, the plain language of the Commission's rules provides that the statute of limitations is satisfied if the program carriage complaint is filed within one year of the pre-filing notice, which WealthTV has done in this case.

3. Similarly Situated

33. WealthTV provides similar evidence submitted in connection with its complaint against TWC purporting to demonstrate that WealthTV and MOJO are similarly situated. Cox notes some general dissimilarities between specific programming on WealthTV and MOJO. Cox appears to be arguing that a complainant must demonstrate that its programming is identical to an affiliated network in order to demonstrate discrimination. We find that this is a misreading of the program carriage statute and our rules.

4. Differential Treatment

34. WealthTV argues that Cox has treated WealthTV differently by carrying MOJO on its systems but refusing to carry WealthTV on those same systems.

5. Harm to Ability To Compete

35. As required by the program carriage statute and our rules, WealthTV has provided evidence that Cox's refusal to carry WealthTV restrains its ability to compete fairly. WealthTV explains that Cox's decision to carry MOJO but to deny carriage to WealthTV provides MOJO with a first mover advantage with respect to the viewers and advertisers each network targets. WealthTV also submits that an independent channel must be available to at least 20 million subscribers in order to attract national advertisers and to achieve financial viability. WealthTV states that the inability to obtain carriage on Cox systems makes it more difficult for independent programmers to reach this level of subscribership. In addition, WealthTV explains that obtaining carriage in major markets where Cox owns or operates systems, such as Central Florida, New England, Phoenix, and San Diego, is essential for attracting advertisers. According to WealthTV, many MVPDs refuse to carry a programming service that has been denied carriage by Cox. In addition, Cox's refusal to carry WealthTV has harmed WealthTV's ability to bargain with advertisers and other cable systems.

36. In response, Cox does not dispute that 20 million subscribers are needed for a channel to achieve long-term viability, but states that it serves approximately six million MVPD households, thereby making carriage on its systems not necessary in order to reach the 20 million subscriber benchmark. The program carriage rules, however, apply to all MVPDs, regardless of their subscriber base. Cox also claims that WealthTV could meet this benchmark through carriage agreements with other MVPDs, including MVPDs with no affiliation with MOJO, such as DIRECTV and DISH Network, but that WealthTV has failed to reach carriage agreements with these MVPDs as well. We reject this claim because it would effectively exempt all MVPDs from program carriage obligations based on the possibility of carriage on other MVPDs. Moreover, the program carriage provision of the Act prohibits an MVPD from discriminating against an unaffiliated programmer regardless of the competition the MVPD faces. Cox also asserts that the 20 million subscriber benchmark cannot apply to

an HD network such as WealthTV because there are fewer than 20 million HD customers nationwide. WealthTV explains, however, that its HD feed is also available as a downconverted SD feed that can be viewed by all subscribers. While Cox notes that WealthTV has obtained carriage on a number of MVPDs despite the lack of a carriage agreement with Cox, we agree with WealthTV that the more pertinent consideration is its ability to compete over the long term absent a carriage agreement with Cox.

6. Alleged Business and Editorial Justifications for Cox's Refusal To Carry WealthTV

37. Cox offers a number of alleged business and editorial justifications for its refusal to carry WealthTV but to carry MOJO. First, Cox claims that its minority interest in MOJO does not provide a sufficient basis for Cox to decline to carry WealthTV. Cox admits, however, that its interest in MOJO satisfies the attribution threshold, thus the program carriage rules apply to its conduct regarding carriage of MOJO.

38. Second, Cox claims that it declined to carry WealthTV based on ''sound business considerations and reasonable editorial judgment.'' Specifically, Cox states that its decision to carry a channel depends on the following criteria: Likely viewer appeal; the quality of the programming; whether the channel has a proven track record of attracting viewers or is associated with an established brand; the likelihood of the channel's success considering its management team and business plan; bandwidth management; proposed terms of carriage; the local needs of Cox's cable systems; and whether the channel has a regional appeal that might be attractive to certain systems. Cox claims that WealthTV does not justify carriage based on these criteria. WealthTV argues that it satisfies Cox's selection criteria. For example, WealthTV asserts that it is an established channel with experienced management; offered very favorable terms for carriage; and that Cox's alleged concern regarding bandwidth constraints from carrying an HD channel are not a valid concern because WealthTV was offering SD digital and VOD products in addition to HD. WealthTV also provides evidence that it has proven viewer appeal, as demonstrated by: (i) Its linear carriage on 75 MVPDs to date; (ii) a sampling of e-mails from viewers reflecting their support for the channel; (iii) the interest in the channel expressed by representatives of various Cox systems; (iv) the interest expressed by Cox-San Diego and a Cox programming network in San Diego (4SD—High Definition) in carrying WealthTV-produced content; and (v) the interest expressed by a CBS affiliate in Las Vegas in carrying WealthTV as a multicast channel, which the General Manager of Cox-Las Vegas refused to carry because of the potential for negative customer reaction if the CBS affiliate were to drop the WealthTV programming.

39. Third, Cox contends that most of the MVPDs that do not carry WealthTV are not affiliated with MOJO, thus demonstrating that decisions to refrain from carrying WealthTV are not based on affiliation. For example, Cox notes that DBS operators, DIRECTV and DISH Network, do not carry WealthTV. WealthTV explains, however, that the decision of DBS operators to refrain from carrying WealthTV is irrelevant because they do not carry MOJO either. In any event, we agree with WealthTV that the salient fact is that each owner of the cable-affiliated MOJO network has refused to carry WealthTV, and a discrimination claim requires the Commission to assess why these cable operators have decided to refuse carriage to WealthTV.

7. Conclusion

40. We conclude that WealthTV has established a *prima facie* showing that Cox has discriminated against WealthTV in violation of the program carriage rules.

D. WealthTV v. Comcast

41. After reviewing the pleadings and supporting documentation filed by the parties, we find that WealthTV has established a *prima facie* showing of discrimination under Section 76.1301(c). Comcast is an MVPD and the largest cable operator in the nation as measured by number of subscribers. Comcast serves over 24 million basic video subscribers in 39 states and the District of Columbia. Comcast is affiliated with MOJO, a video programming vendor. According to Comcast, MOJO is aimed at 18- to-49-year-old males and its principal programming consists of sports, movies, and concerts. On May 3, 2007, WealthTV provided Comcast with a pre-filing notice pursuant to Section 76.1302(b) of the Commission's rules informing Comcast of its intent to file a program carriage complaint. As discussed further below, on April 21, 2008, WealthTV filed its complaint, alleging that Comcast violated Section 76.1301(c) by refusing to carry WealthTV while granting carriage to its affiliated MOJO service.

1. Background

42. WealthTV states that it has been seeking carriage on Comcast systems since early to mid-2004. WealthTV discusses its visits with Comcast representatives in leading markets and claims that systems in Comcast's Atlantic Division, San Francisco, Washington DC/Virginia, Chicago, Washington state, and Florida all expressed interest in carrying WealthTV. According to WealthTV, in the summer of 2004, Comcast's corporate programming group acknowledged the interest among Comcast systems in carrying WealthTV but Comcast refused to engage in meaningful negotiations. WealthTV alleges that Alan Dannenbaum, Comcast's Corporate Senior Vice President of Programming, stated in the second half of 2004 that a draft carriage agreement would be forthcoming but blamed ''scarce resources'' for the failure to produce a draft. Comcast states that neither its corporate management nor any individual Comcast system expressed an interest in carrying WealthTV.

43. In August 2006, WealthTV representatives, including WealthTV's President, Charles Herring, met with Mr. Dannenbaum. According to WealthTV, Mr. Dannenbaum stated that ''Comcast will not allow another MTV to be made on Comcast's back without owning it.'' WealthTV states that it understood this to mean that Comcast would not allow a non-affiliated network to become successful without owning it. WealthTV states that this is direct evidence of discrimination in Comcast's carriage decisions. Comcast provides a declaration from Mr. Dannenbaum in which he denies making this statement.

44. Comcast states that it made two offers to carry WealthTV in April 2008, after WealthTV sent its pre-filing notice but prior to the filing of the Complaint. WealthTV counters that Comcast never made a firm offer for carriage during these discussions and that none of the proposals was remotely comparable to the terms and conditions offered to MOJO.

2. Similarly Situated

45. WealthTV provides similar evidence submitted in connection with its complaint against TWC purporting to demonstrate that WealthTV and MOJO are similarly situated. Comcast notes some general dissimilarities between specific programming on WealthTV and MOJO. Comcast appears to be arguing that a complainant must demonstrate that its programming is identical to an affiliated network in order to

demonstrate discrimination. We find that this is a misreading of the program carriage statute and our rules.

3. Differential Treatment

46. WealthTV argues that Comcast has treated WealthTV differently by carrying MOJO on its systems but refusing to carry WealthTV on those same systems. While Comcast claims that it recently offered WealthTV a hunting license coupled with a firm commitment for linear carriage of WealthTV on a system in the Chicago DMA, the salient issue for our analysis is that Comcast has launched its affiliated MOJO network on a nationwide basis but it has refused to carry WealthTV on the same terms.

4. Harm to Ability To Compete

47. As required by the program carriage statute and our rules, WealthTV has provided evidence that Comcast's refusal to carry WealthTV restrains its ability to compete fairly. WealthTV explains that Comcast's decision to carry MOJO while denying carriage to WealthTV provides MOJO with a first mover advantage with respect to the viewers and advertisers each network targets. WealthTV also claims that an independent channel must be available to at least 20 million subscribers in order to attract national advertisers and to achieve financial viability. WealthTV states that the inability to obtain carriage on Comcast systems makes it more difficult for independent programmers to reach this level of subscribership. WealthTV also explains that obtaining carriage in major markets where Comcast owns or operates cable systems, such as Philadelphia, Chicago, San Francisco, Boston, Washington, and Houston, is essential for attracting advertisers. According to WealthTV, cable systems and satellite companies look to Comcast in making programming decisions, thereby making Comcast's refusal to carry WealthTV particularly harmful. In addition, Comcast's refusal to carry WealthTV has harmed WealthTV's ability to bargain with advertisers and other cable systems.

48. In response, Comcast claims that carriage on its competitors, such as DIRECTV, DISH Network, AT&T, and Verizon, would allow WealthTV to reach its subscriber goals. We reject this claim because it would effectively exempt all MVPDs from program carriage obligations based on the possibility of carriage on other MVPDs. Moreover, the program carriage provision of the Act prohibits an MVPD from discriminating against an unaffiliated programmer regardless of the competition the MVPD faces. Comcast also states that WealthTV could distribute its programming on alternative distribution platforms, such as VOD or the Internet. The program carriage statute, however, does not excuse an MVPD's discriminatory conduct based on the possibility of alternative distribution platforms.

5. Alleged Business and Editorial Justifications for Comcast's Refusal To Carry WealthTV

49. Comcast offers a number of alleged business and editorial justifications for its refusal to carry WealthTV but to carry MOJO. First, Comcast states that it declined to carry WealthTV on terms similar to MOJO based on its business and editorial judgment. Specifically, Comcast states that its decision to carry a channel depends on capacity constraints; the type and quality of the programming; the channel's track record of producing programming; evidence of consumer appeal for the channel; the experience of the channel's management team; and the terms offered by the channel. Based on these factors, Comcast contends that it determined that WealthTV does not warrant extensive carriage. WealthTV argues that it meets Comcast's carriage criteria, explaining that it is an established channel with experienced management and proven consumer appeal, as demonstrated by: (i) Its linear carriage on 75 MVPDs to date; (ii) a sampling of e-mails from viewers reflecting their support for the channel; (iii) the interest in the channel expressed by representatives of various Comcast systems as well as favorable comments about WealthTV made by Madison Bond, Comcast's Executive Vice President for Content Acquisition; and (iv) the results of an independent survey which reports that WealthTV's HD VOD product ranked fourth out of twenty HD services. WealthTV also notes that it offered very favorable terms for carriage.

50. Second, Comcast contends that most MVPDs do not carry WealthTV, including those that have no affiliation with MOJO, again demonstrating that decisions regarding carriage of WealthTV are not based on affiliation. For example, Comcast notes that DBS operators, DIRECTV and DISH Network, do not carry WealthTV. WealthTV explains, however, that the decision of DBS operators to refrain from carrying WealthTV is irrelevant because they do not carry MOJO either. Moreover, WealthTV notes that AT&T, Verizon, and other Comcast competitors carry WealthTV but not MOJO.

6. Conclusion

51. We conclude that WealthTV has established a prima facie showing that Comcast has discriminated against WealthTV in violation of the program carriage rules.

E. Conclusion

52. In the *Second Report and Order,* the Commission stated that it would identify specific behavior that constitutes discrimination on a case-by-case basis ''because the practices at issue will necessarily involve behavior that must be evaluated within the context of specific facts pertaining to each negotiation.'' *Second Report and Order,* 58 FR 60390, November 16, 1993. Any complainant alleging a violation of the prohibition in Section 616(a)(3) on discrimination must demonstrate that the alleged discrimination is ''on the basis of affiliation or nonaffiliation'' of a vendor, and that ''the effect of the conduct that prompts the complaint is to unreasonably restrain the ability of the complainant to compete fairly.'' *Id.;* 47 CFR 76.1302(c)(3). After reviewing the pleadings and supporting documentation filed by the parties, we find that WealthTV has established a *prima facie* case in the above-referenced cases under Section 76.1301(c). We also find that the pleadings and supporting documentation present several factual disputes as to whether TWC, BHN, Cox, and Comcast discriminated against WealthTV in favor of their affiliated MOJO service. Accordingly, we direct the ALJ to make and return a Recommended Decision to the Commission pursuant to the procedures set forth below within 60 days after release of this *Order* (*i.e.*, by December 9, 2008).

II. NFL Enterprises v. Comcast

53. After reviewing the pleadings and supporting documentation filed by the parties, we find that the NFL has established a *prima facie* case that Comcast (i) discriminated against the NFL Network in violation of Section 76.1301(c) of our rules; and (ii) required a financial interest in the NFL's programming as a condition for carriage of the NFL Network, in violation of Section 76.1301(a) of the Commission's rules. The NFL owns the NFL Network, a video programming vendor as defined in Section 616(b) of the Act and Section 76.1300(e) of the Commission's rules. *See* 47 U.S.C. 536(b); 47 CFR 76.1300(e). The NFL Network was launched in 2003 as a fan development vehicle to offer football-related programming. In addition to offering eight live NFL regular season games, the NFL Network

offers pre-season live and tape-delayed games as well as coverage of the NFL Scouting Combine, the NFL Draft, team training camps, and other programming. The NFL states that the NFL Network is an independent network that is not owned by any cable or satellite operator. The NFL Network is currently carried by over 240 MVPDs to 36 million subscribers nationwide. Comcast is the largest MVPD in the nation, with approximately 24.7 million subscribers. Comcast is affiliated with Versus (previously named the Outdoor Life Network (''OLN'')), the Golf Channel, as well as other video programming vendors.

A. Background

54. On April 17, 2008, the NFL provided Comcast with a pre-filing notice pursuant to Section 76.1302(b) of the Commission's rules informing Comcast of its intent to file a program carriage complaint. As discussed further below, on May 6, 2008, the NFL filed its complaint, alleging that Comcast (i) discriminated against the NFL Network in favor of its affiliated video programming vendors, including Versus and the Golf Channel, in violation of Section 76.1301(c) of the Commission's rules; and (ii) required a financial interest in the NFL's programming as a condition for carriage of the NFL Network, in violation of Section 76.1301(a) of the Commission's rules. In its Complaint, the NFL requests the Commission to (i) Find Comcast in violation of Sections 76.1301(a) and (c) of the Commission's rules; (ii) enjoin Comcast from further program carriage discrimination; (iii) order Comcast to carry the NFL Network on equitable terms that do not unreasonably restrict its ability to compete fairly, as determined by the Media Bureau; and (iv) order any other relief that may be appropriate. In its Reply, the NFL specifies further that the Commission should require Comcast to carry the NFL Network on the same tier as its affiliated national sports networks, Versus and the Golf Channel, beginning with the commencement of the fall 2008 football season. The NFL also contends that an extensive evidentiary investigation is not needed and that the Commission should promptly enter an Order providing its requested relief.

55. According to Comcast, the NFL approached Comcast regarding carriage of the NFL Network in 2003. Comcast claims that it was not interested in carrying the NFL Network because consumer interest in a football-only network without any live NFL games appeared weak; Comcast had bandwidth constraints; and Comcast was concerned about the soaring costs of sports programming. Comcast claims that around the time the NFL was seeking carriage for the NFL Network, it was also seeking to make available to MVPDs its NFL Sunday Ticket package and a package of eight live NFL regular season games (the ''Eight-Game Package''). Comcast states that it was interested in acquiring the rights to telecast the NFL Sunday Ticket because it had lost subscribers to DIRECTV which had exclusive rights to NFL Sunday Ticket. Comcast states that it was also interested in licensing the Eight-Game Package for its Versus network. According to Comcast, the NFL sought to make carriage of the NFL Network more attractive by coupling carriage of the NFL Network on a widely distributed tier with an opportunity for Comcast to bid on NFL Sunday Ticket and the Eight-Game Package. Comcast was concerned, however, that it might be forced to carry the NFL Network on a widely distributed tier even if it did not acquire the licensing rights to NFL Sunday Ticket and the Eight-Game Package.

56. In August 2004, the NFL and Comcast entered into a Negotiating Agreement regarding the NFL Sunday Ticket and the Eight-Game Package and an Affiliation Agreement regarding carriage of the NFL Network. In the Affiliation Agreement, Comcast agreed to carry the NFL Network on its digital basic tier (called the ''D2'' tier). The Affiliation Agreement provided that, with one exception, no Comcast system could distribute the NFL Network solely in a sports tier. The exception provided that Comcast would have the right to move the NFL Network from the digital basic tier to any tier (including a premium sports tier) if Comcast and the NFL did not reach an agreement by July 31, 2006 concerning carriage of the NFL Sunday Ticket or the Eight-Game Package (the ''Conditional Tiering Provision''). The NFL alleges that Comcast ''forced'' it to agree to the Conditional Tiering Provision. Comcast states that this provision was meant to address its concern that it might be forced to carry the NFL Network on a widely distributed tier even if it did not acquire the licensing rights to NFL Sunday Ticket or the Eight-Game Package. Comcast claims that the Conditional Tiering Provision was a fundamental part of the parties' agreement and that it would not have agreed to carry the NFL Network without this provision. Pursuant to this Affiliation Agreement, Comcast began to carry the NFL Network on its digital basic tier in 2004. According to the NFL, from 2004 until the summer of 2007, approximately 8.6 million Comcast customers received the NFL Network on the digital basic tier.

57. In November 2004, the NFL renewed its exclusive contract with DIRECTV for the NFL Sunday Ticket through 2010, but Comcast and the NFL continued negotiations regarding the Eight-Game Package. During the negotiations regarding the Eight-Game Package, Comcast claims that it reminded the NFL on more than one occasion that the Conditional Tiering Provision would provide Comcast with the right to move the NFL Network to a sports tier if Comcast did not obtain the rights to the Eight-Game Package for its Versus network.

58. On January 24, 2006, Comcast's Chief Executive Officer Brian Roberts met with then-NFL Commissioner Paul Tagliabue and others from the NFL. The NFL states that Mr. Tagliabue told Mr. Roberts that the NFL's then-current thinking was that it would not license the Eight-Game Package to Comcast. According to the NFL, Mr. Roberts ''threatened that if the NFL did not license the package to Versus, Comcast would drop the NFL Network from the 'D2' tier and shift it to an undesirable premium sports tier * * *.'' According to Comcast, Mr. Roberts was simply reminding the NFL of Comcast's rights under the Conditional Tiering Provision. Following this meeting, the NFL awarded the Eight-Game Package to the NFL Network.

59. According to the NFL, on January 27, 2006, Mr. Roberts ''warned'' Mr. Tagliabue that, because of the NFL's failure to license the Eight-Game Package to Comcast, the NFL's ''relationships with the cable industry are going to get very interesting.'' Mr. Tagliabue states that he believes that this statement foreshadowed Comcast's retaliation against the NFL for refusing to license the Eight-Game Package to Comcast. Mr. Roberts states that he has no recollection of making this statement. Rather, Mr. Roberts states that he expressed his disappointment about the NFL's decision and said that he foresaw that the NFL would continue to face difficulties persuading cable operators to provide the NFL Network with broad distribution given that the Eight-Game Package would add significantly to the price of the network but would not improve the overall appeal of the content.

60. Pursuant to the Affiliation Agreement, Comcast would have the right to show the Eight-Game Package on the NFL Network on its cable systems only if Comcast agreed to an increase in the license fee for the NFL

Network of up to $0.55 per subscriber per month. If Comcast did not agree to pay this increase in the license fee, then the NFL Network would show alternate programming on Comcast's systems at the times these games would be shown. On July 27, 2006, Comcast agreed to the fee increase. Comcast claims that it agreed to this fee increase only after confirming with the NFL that the Conditional Tiering Provision was mutually understood to remain in effect.

61. On September 24, 2006, Comcast announced its plans to launch the NFL Network on a premium sports tier on systems it had acquired from Time Warner. In October 2006, the NFL sued Comcast in New York state court claiming that Comcast did not have the right under the parties' agreements to carry the NFL Network on a premium sports tier. In the NFL's view, the Conditional Tiering Provision in the Affiliation Agreement was not triggered because Comcast and the NFL reached an agreement concerning carriage of the Eight-Game Package when Comcast agreed to pay an additional $0.55 per subscriber per month to deliver the NFL Network's broadcast of the Eight-Game Package via Comcast's cable systems. In Comcast's view, Comcast and the NFL did not reach an agreement concerning carriage of the Eight-Game Package because the games were awarded to the NFL Network and not to Comcast's affiliated Versus network. In May 2007, the trial court granted Comcast's motion for summary judgment. Following release of the trial court's order, Comcast formally notified the NFL of its intent to shift NFL Network to a sports tier in most of its systems. The NFL states that Comcast's action to shift the NFL Network from a digital basic tier to a premium sports tier reduced the number of Comcast subscribers that received the NFL Network from 8.6 million to 1.4 million. On February 26, 2008, a New York appellate court reversed the lower court's ruling and found that the parties' agreement was sufficiently ambiguous to create a triable issue of fact. In May 2008, the parties agreed to pursue non-binding mediation at the request of the court.

B. Procedural Issues

62. Comcast argues that the NFL complaint should be dismissed on any of the following procedural grounds. For the reasons discussed below, we decline to dismiss the complaint on any of these grounds.

1. Program Carriage Statute of Limitations

63. Comcast argues that the NFL complaint is barred by the program carriage statute of limitations. Comcast contends that, of the events that trigger the running of the program carriage statute of limitations, only the date on which the parties entered into a carriage agreement for the NFL Network is applicable in this case. Comcast states that the Affiliation Agreement was executed on August 11, 2004, thereby causing the statute of limitations to expire on August 11, 2005. Comcast asserts that its exercise of its contractual right to retier the NFL Network cannot be the triggering event because that is a decision made under the Affiliation Agreement and any disagreement regarding the terms of the agreement must be addressed in state court. In response, the NFL states that its complaint does not allege that the Affiliation Agreement violates the program carriage rules. Rather, the NFL claims that the issue is the legality of Comcast's act of retiering the NFL Network to a premium sports tier between June 1, 2007 and July 15, 2007. The NFL states that it filed its complaint within days after its pre-filing notice and less than a year after Comcast's action to retier the NFL Network, in compliance with the statute of limitations in Section 76.1302(f)(3). Comcast argues that the statute of limitations period cannot run from the date of the NFL Network's pre-filing notice. Comcast alleges that such an interpretation would allow a programmer to bring a program carriage complaint simply by sending a ''trigger'' letter at any time. The NFL contends, however, that the statute of limitations cannot be interpreted to run only from the date an existing agreement was executed because that would preclude a programmer from seeking relief regarding discriminatory acts that occurred greater than one year after the agreement was executed.

64. We conclude that the NFL filed its program carriage complaint in compliance with the program carriage statute of limitations. The alleged act of discrimination about which the NFL complains is Comcast's act of moving the NFL Network from a digital basic tier to a premium sports tier. This act occurred no earlier than June 2007. The NFL filed its program carriage complaint within one year of this act and within one year of its pre-filing notice. Accordingly, the NFL filed its complaint in compliance with the statute of limitations. We reject Comcast's argument that the one-year statute of limitations is triggered by the execution of the agreement because that act did not give rise to the discrimination claim and treating that act as the triggering event here would render Section 76.1302(f)(3) of our rules superfluous and frustrate enforcement of the statute and rules.

2. Dismissal Pending Litigation

65. Comcast argues that the NFL complaint should be dismissed pending the outcome of the state court litigation. Comcast states that the NFL and Comcast are involved in contract litigation involving the same set of operative facts that underlie the complaint, and the resolution of which is inextricably intertwined with the resolution of the complaint. Comcast contends that, if the court rules that the Conditional Tiering Provision was triggered, then it would be difficult if not impossible for the Commission to decide that Comcast violated the program carriage rules by exercising a right granted to it by the NFL. According to the NFL, however, the issue of the interpretation of the contract is irrelevant to the program carriage dispute. In the NFL's view, even if the court finds that the Conditional Tiering Provision was triggered and Comcast had the ''right'' to retier the NFL Network, Comcast could not exercise that right in a discriminatory manner that violates the program carriage rules. According to the NFL, Section 616 protects independent programmers and the public regardless of the terms of a private agreement. Comcast asserts that dismissal of the complaint pending litigation is consistent with Commission precedent. The NFL disputes this and notes that the Commission addressed a program carriage complaint filed by TCR Sports Broadcasting Holding, L.L.P. against Comcast despite the pendency of related litigation in state court. Comcast also claims that it would be a waste of resources for the Commission to consider the complaint because the parties have already decided to mediate the issues in dispute. According to Comcast, the NFL agreed to a broad mediation that would encompass all issues between the parties, including those in the program carriage complaint proceeding. According to the NFL, the state court litigation does not address the issues of program carriage discrimination addressed in the program carriage complaint proceeding. The NFL also states that, even if the court were to address program carriage discrimination, it would not be ripe for resolution until after the next football season and likely the one that follows (2009–2010). The NFL also notes that the parties have not agreed to seek a stay of the program carriage proceeding pending the outcome of the mediation.

Thus, the NFL argues that the mediation should not affect the Commission's consideration of the program carriage issues in this proceeding.

66. We decline to dismiss the NFL complaint pending the outcome of the state court litigation. The act of alleged discrimination about which the NFL complains is Comcast's act of moving the NFL Network from a digital basic tier to a premium sports tier. Whether or not Comcast had the right to retier the NFL Network pursuant to a private agreement is not relevant to the issue of whether doing so violated Section 616 of the Act and the program carriage rules. Parties to a contract cannot insulate themselves from enforcement of the Act or our rules by agreeing to acts that violate the Act or rules. Because the state court litigation will not resolve the NFL's program carriage claim, we conclude that we can proceed with the program carriage complaint despite the pendency of the litigation. Moreover, the parties have not agreed to stay this proceeding pending the outcome of mediation, and we find no cause to do so on our own motion.

3. Specificity of Requested Relief

67. Comcast argues that the NFL complaint should be dismissed because the complaint failed to state ''with specificity'' the relief requested. 47 CFR 76.6(a)(1). Comcast states that the NFL's requested relief does not include specific proposals regarding price, tier placement, and other carriage terms. The NFL argues that its complaint was sufficiently specific in seeking carriage by Comcast on non-discriminatory terms, *i.e.*, on the same terms and conditions as Comcast's affiliated national sports networks, Versus and the Golf Channel, including carriage on the expanded basic tier. We conclude that the NFL's requested relief was sufficiently specific under our rules and did not deprive Comcast of an adequate opportunity to respond in its Answer.

4. Signature and Verification Requirements

68. Comcast states that the NFL complaint does not comply with the signature and verification requirements applicable to program carriage complaints. The NFL does not dispute these claims, but argues that other program carriage complaints that did not comply with the signature requirement have been accepted by the Commission and that its complaint included a Declaration of an NFL executive certifying the accuracy of the factual statements in the complaint. We agree with Comcast that these instances of non-compliance are of ''limited consequence.'' Accordingly, on our own motion, we waive these requirements in the interests of resolving the important issues raised in the complaint in an expeditious manner and due to the presence of the Declaration of an NFL executive referenced above.

C. Discrimination Claim

1. Similarly Situated

69. The NFL alleges that Comcast has discriminated against the NFL Network in favor of its affiliated video programming vendors, including Versus and the Golf Channel, in violation of Section 76.1301(c) of the Commission's rules. The NFL argues that the NFL Network is a national sports network and therefore is similarly situated to the national sports networks that Comcast owns (Versus and the Golf Channel). The NFL also argues that the NFL Network, Versus, and the Golf Channel compete for programming, advertising, or target viewers. Comcast claims that the NFL Network is not a direct competitor to Versus or the Golf Channel in terms of programming, advertising, or target viewers. Comcast appears to be arguing that a complainant must demonstrate that its programming is identical to an affiliated network in order to demonstrate discrimination. We find that this is a misreading of the program carriage statute and our rules.

2. Differential Treatment

70. The NFL alleges that Comcast has discriminated against the NFL Network in violation of Section 76.1301(c) by carrying the NFL Network on a premium sports tier (which costs subscribers an additional $5–7 per month and is subscribed to by approximately 2 million Comcast subscribers) while Comcast carries the national sports networks that it owns (Versus and Golf Channel) on an expanded basic tier which has approximately 24 million subscribers. Comcast admits that it carries the NFL Network on a premium sports tier but carries Versus and the Golf Channel on its expanded basic tier.

3. Harm to Ability To Compete

71. As required by the program carriage statute and our rules, the NFL Network has provided evidence purporting to demonstrate that Comcast's refusal to carry the NFL Network on an expanded basic tier restrains its ability to compete fairly. The NFL explains how Comcast's decision to exclude the NFL Network from a basic tier has prevented the network from achieving economies of scale and has blocked the network from the most efficient distribution channel for the provision of national sports programming and the sale of advertising. The NFL explains that carriage of the NFL Network on a widely distributed tier is better for the network, viewers, and advertisers than carriage on a premium tier and that carriage on a premium tier unreasonably impedes the NFL Network's ability to compete fairly. With respect to the benefits for the network, the NFL discusses how basic tier carriage results in more subscribers which results in greater advertising revenues, greater license revenues, and a greater ability to compete for national advertisers and for content, and relieves the network from having to incur promotional expenses to convince consumers to subscribe to the premium tier. Moreover, the NFL explains that basic tier carriage maximizes a network's subscribership and, thus, advertising revenues, which allows for reduced license fees. The NFL also submits that carriage of a network on a basic tier benefits consumers by allowing the network to discipline the license fees of rival networks. In addition, the NFL claims that basic tier carriage benefits advertisers by enabling the NFL Network to discipline advertising rates of rival networks. The NFL explains that Comcast's affiliated national sports networks, Versus and the Golf Channel, benefit from Comcast's decision to carry the NFL Network on a premium tier. Specifically, placing the NFL Network in a premium sports tier harms its ability to compete with Comcast's affiliated national sports networks by (i) increasing the NFL Network's promotional costs and by reducing its advertising revenues; and (ii) providing Comcast's affiliated national sports networks with a competitive advantage in attracting advertisers and obtaining new content because these networks have greater distribution than their rival the NFL Network. The NFL also notes that Comcast's behavior to favor its affiliated national sports networks is similar to behavior that has been found to be a violation of the program carriage rules in another case.

72. Comcast argues that the NFL Network can achieve a critical mass of subscribers without carriage on Comcast. Comcast claims that there are multiple competing MVPDs that offer the NFL Network in all areas served by Comcast, such as DIRECTV, DISH Network, RCN, Verizon, and AT&T. According to Comcast, if its subscribers do not like Comcast's decision to place the NFL Network on a premium sports tier, they can switch to an MVPD that

provides the NFL Network with wider carriage. Comcast also argues that the fact that it already makes the NFL Network available to 24 million households undermines the NFL's claim that Comcast is unreasonably restraining the ability of the NFL Network to compete fairly.

4. Alleged Business and Editorial Justifications for Comcast's Refusal To Carry NFL Network on an Expanded Basic Tier

73. Comcast offers a number of alleged business and editorial justifications for its decision to place the NFL Network on a premium sports tier while placing Versus and the Golf Channel on an expanded basic tier. First, Comcast notes that the license fee for Versus is approximately $0.25 per subscriber per month and the license fee for the Golf Channel is less than $0.35 per subscriber per month, whereas the license fee for the NFL Network with the Eight-Game Package is $0.70 per subscriber per month. The NFL contends that Comcast has failed to consider the record evidence that the NFL Network receives substantially higher ratings than Versus and the Golf Channel, despite the fact that the NFL Network is carried on a premium tier. The NFL notes that the relatively lower license fees for Versus and the Golf Channel reflect their lower popularity. Moreover, NFL provides evidence that the NFL Network is less expensive than some other sports networks, such as ESPN and some RSNs. While Comcast argues that it acted to protect its customers by placing expensive programming such as the NFL Network on a premium sports tier, the NFL alleges that Comcast's decision to move the NFL Network to a premium sports tier did not result in a reduction in the monthly fees for its digital basic service, thereby undermining its claim that its decision to retier the NFL Network was intended to protect consumers.

74. Second, Comcast claims that Versus and the Golf Channel offer far more live and same-day event programming than the NFL Network. The NFL responds that the record evidence demonstrates that the NFL Network receives substantially higher ratings than Versus and the Golf Channel, despite the amount of live sports programming on Versus and the Golf Channel.

75. Third, Comcast argues that different carriage histories justify wide distribution for Versus and the Golf Channel and more limited distribution for the NFL Network. Specifically, Comcast notes that Versus and the Golf Channel launched in 1995 when there were greater opportunities for launch of a network, even on expanded basic. The NFL argues, however, that basing carriage decisions on carriage histories unfairly favors affiliated networks that have enjoyed a history of preferential treatment from vertically integrated MVPDs and does not serve to distinguish discriminatory from nondiscriminatory treatment, as the Act and our rules require.

76. Fourth, Comcast contends that cable subscribers already have access to a substantial quantity of live NFL programming on broadcast television and ESPN. Moreover, Comcast notes that the out-of-market games offered by the NFL Network are available on local broadcast channels in the home markets of the participating teams. The NFL submits that the consistently high ratings for the NFL Network refute Comcast's claim that there is a lack of demand for football programming. The NFL also notes that Comcast's previous decision to place the NFL Network on its digital basic tier demonstrates Comcast's view that the programming on the NFL Network has broad appeal.

77. Fifth, Comcast notes that some MVPDs, such as Charter, Time Warner, Cablevision, Bright House, Suddenlink, and Mediacom, do not carry the NFL Network at all, while others, such as Cox, carry the NFL Network on a sports tier. According to Comcast, the fact that other MVPDs that are not vertically integrated with national sports networks have decided to carry the NFL Network on a premium sports tier (or not at all) demonstrates that Comcast's decision to place the NFL Network on a premium sports tier was based on legitimate business reasons. The NFL contends that this claim is rebutted by the record evidence that demonstrates substantial carriage of NFL Network by various MVPDs on widely distributed tiers. The NFL notes that all of Comcast's major competitors—DIRECTV, DISH Network, Verizon, and AT&T—carry the NFL Network on a more widely distributed tier than the digital basic tier that Comcast formerly carried the NFL Network on before it was shifted to a premium sports tier. Moreover, the NFL states that most of the approximately 240 MVPDs that carry the NFL Network carry it on widely distributed tiers that are available in at least 70 percent of the households served by these MVPDs. In addition, the NFL claims that Comcast is the only MVPD that carries the NFL Network on a tier taken by less than ten percent of subscribers.

78. Finally, Comcast argues that Versus and the Golf Channel are carried on widely distributed tiers of virtually every major MVPD, even though these MVPDs have no ownership interest in either network. The NFL argues that the conduct of other cable operators is irrelevant to the issue of whether Comcast carries its affiliated programmers on more favorable terms than the NFL Network, an unaffiliated programmer.

5. Conclusion

79. In the *Second Report and Order,* the Commission stated that it would identify specific behavior that constitutes discrimination on a case-by-case basis ''because the practices at issue will necessarily involve behavior that must be evaluated within the context of specific facts pertaining to each negotiation.'' *Second Report and Order,* 58 FR 60390, November 16, 1993. Any complainant alleging a violation of the prohibition in Section 616(a)(3) on discrimination must demonstrate that the alleged discrimination is ''on the basis of affiliation or nonaffiliation'' of a vendor, and that ''the effect of the conduct that prompts the complaint is to unreasonably restrain the ability of the complainant to compete fairly.'' *Id.;* 47 CFR 76.1302(c)(3). After reviewing the pleadings and supporting documentation filed by the parties, we find that the NFL has established a *prima facie* case in the above-referenced case under Section 76.1301(c). We also find that the pleadings and supporting documentation present several factual disputes as to whether Comcast discriminated against the NFL in favor of its affiliated services. Accordingly, we direct the ALJ to make and return a Recommended Decision to the Commission pursuant to the procedures set forth below within 60 days after release of this *Order* (*i.e.*, by December 9, 2008).

D. Financial Interest Claim

80. The NFL claims that Comcast retaliated against the NFL by dropping the NFL Network from the digital basic tier to a premium sports tier after the NFL refused to grant Comcast rights to the Eight-Game Package for Comcast's Versus network. The NFL alleges that this amounts to a violation of Section 76.1301(a) because Comcast has required a financial interest in the NFL's programming as a condition for program carriage. The NFL argues that Comcast's behavior here is similar to behavior that has been found to present a *prima facie* case of a violation of the program carriage rules in another proceeding.

81. Comcast states that it never required or even requested an equity interest in the NFL Network. Comcast states that Section 76.1301(a) does not prohibit an MVPD from seeking

licensing rights in programming as a condition for carriage. Rather, Comcast states that this rule only prohibits an MVPD from requiring a financial interest in a ''program service'' as a condition for carriage. According to Comcast, the NFL incorrectly conflates Comcast's interest in acquiring the licensing rights to the Eight-Game Package with a demand for equity in the NFL Network. Comcast notes that it has no financial interest in the NFL Network or the NFL and yet it still carries the NFL Network. Accordingly, Comcast argues that it has not conditioned carriage of the NFL Network on obtaining an equity interest in the NFL Network.

82. In response, the NFL argues that the statute precludes an MVPD from requiring any ''financial interest'' in a program service, not merely an ''equity interest,'' and thus includes an MVPD's demand that a programmer provide licensing rights, equity interests, or other financial interests in a program service. The NFL submits that narrowly construing the term ''financial interest'' to pertain only to demands for an equity interest would fail to curb many anticompetitive abuses of vertically integrated MVPDs during carriage negotiations. Moreover, the NFL notes that Section 76.1301(a) prohibits an MVPD from requiring a financial interest in ''any program service,'' not merely the program service for which carriage is sought and not only in a ''video programming vendor.''

83. In the *Second Report and Order,* the Commission emphasized that the statute ''does not explicitly prohibit multichannel distributors from acquiring a financial interest or exclusive rights that are otherwise permissible,'' and thus, that ''multichannel distributors [may] negotiate for, but not insist upon such benefits in exchange for carriage on their systems.'' *Second Report and Order,* 58 FR 60390, November 16, 1993. The Commission stated, however, that ''ultimatums, intimidation, conduct that amounts to exertion of pressure beyond good faith negotiations, or behavior that is tantamount to an unreasonable refusal to deal with a vendor who refuses to grant financial interests or exclusivity rights for carriage, should be considered examples of behavior that violates the prohibitions set forth in Section 616.'' *Id.* We find that the NFL has presented sufficient evidence to make a *prima facie* showing that Comcast indirectly and improperly demanded a financial interest in the NFL's programming in exchange for carriage. We further find that the pleadings and documentation present several factual disputes as to whether Comcast's retiering of the NFL Network is the result of Comcast's failure to obtain a financial interest in the NFL's programming. Accordingly, we direct an Administrative Law Judge to hold a hearing, issue a recommended decision on the facts underlying the financial interest claim and a recommended remedy, if necessary, and then return the matter to the Commission within 60 days.

III. MASN v. Comcast

84. After reviewing the pleadings and supporting documentation filed by the parties, we find that MASN has established a *prima facie* case under Section 76.1301(c). MASN is an RSN that owns the rights to produce and exhibit the games of the Baltimore Orioles and Washington Nationals, among other sporting events. MASN is a video programming vendor as defined in Section 616(b) of the Act and Section 76.1300(e) of the Commission's rules. Pursuant to the by-laws of Major League Baseball (''MLB''), each MLB team is assigned television rights to certain geographic regions based on its determination of which teams' baseball fans in certain areas would or would not support. The home territory for MASN consists of the entire states of Virginia, Maryland, Delaware, and Washington, DC, and certain parts of southern Pennsylvania, eastern West Virginia, and a substantial part of North Carolina (the ''MASN Territory''). Comcast is the nation's largest MVPD and holds an attributable ownership interest in Comcast SportsNet Philadelphia (''CSN–P'') and Comcast SportsNet Mid-Atlantic (''CSN–MA''), among other networks.

85. On March 7, 2008, MASN provided Comcast with its pre-filing notice. MASN filed its complaint on July 1, 2008, alleging that Comcast discriminated against MASN in violation of the program carriage rules. MASN asks the Commission to (i) Declare that Comcast's conduct is a violation of the program carriage obligations under the Act and the Commission's rules; (ii) order mandatory carriage of MASN on the Comcast systems in the MASN Territory that do not carry MASN; (iii) if necessary, require Comcast to delete its affiliated programming to clear capacity for MASN; (iv) require Comcast to provide a timetable for the upgrade of the former-Adelphia systems; (v) grant MASN substantial damages that have resulted from Comcast's misconduct; and (vi) grant MASN such other and further relief as the Commission deems just and proper. Comcast urges the Commission to find MASN in violation of the rules prohibiting frivolous pleadings and to impose appropriate penalties, including monetary forfeitures.

A. Background

86. MASN claims that since 2005 it has sought carriage on all of Comcast's cable systems located within the MASN Territory, including in the Harrisburg-Lancaster-Lebanon-York DMA (''Harrisburg DMA''), as well as the Roanoke-Lynchburg DMA and the Tri-Cities DMA (the later two DMAs are referred to as the ''southwestern Virginia DMAs''). Comcast denies that MASN ever specifically sought carriage in Harrisburg and southwestern Virginia during negotiations in 2005 or 2006. In fact, Comcast claims that MASN's primary focus was to obtain carriage in its core Washington, DC and Baltimore markets before the end of the 2006 baseball season, and at no point did MASN express any specific interest in Comcast's Harrisburg or southwestern Virginia systems.

87. The parties failed to reach a carriage agreement. In June 2005, MASN filed a program carriage complaint alleging discrimination and that Comcast illegally demanded a financial interest in MASN as a condition of carriage. MASN requested that the Commission order Comcast to provide carriage of MASN on all Comcast systems in the MASN Territory. On July 21, 2006, while MASN's program carriage complaint against Comcast was pending, the Commission adopted the *Adelphia Order,* which provided unaffiliated RSNs with the opportunity to pursue commercial arbitration of program carriage disputes with Comcast. On July 31, 2006, the Commission found that MASN had established a *prima facie* case of discrimination in its pending program carriage complaint and referred the matter to an ALJ. The Commission stayed the decision to give MASN an opportunity to decide whether to proceed with the complaint or with the expedited arbitration provided in the *Adelphia Order.* MASN claims that pursuant to the *Adelphia Order* conditions it had only five days—until August 4, 2006—to decide whether to file an arbitration demand with the American Arbitration Association (''AAA'') or to proceed with the carriage complaint before an ALJ. Comcast disputes this claim, arguing that MASN could have elected to file a simple notice with the AAA (or the Commission) and ask that the proceeding be held in abeyance while the parties continued to negotiate. With the deadline for filing for arbitration

approaching, the parties entered into further negotiations.

88. MASN claims that on August 2, 2006, it e-mailed a revised version of the Term Sheet the parties had been negotiating to Comcast. As with the previous versions, MASN claims that the Term Sheet contained an intentionally blank list of the Comcast systems on which Comcast would carry MASN (the ''List of Systems''). MASN claims that it understood and intended that Comcast would fill in the List of Systems with all of Comcast's cable systems within the MASN Territory. MASN claims that on August 2, 2006, Comcast for the first time expressed concern that it could not immediately commit to carry MASN on systems serving a number of subscribers in Roanoke/Lynchburg and other Virginia areas that were served by systems that Comcast acquired from Adelphia because these systems lacked sufficient capacity.

89. MASN states that on the afternoon of August 4, 2006—just three hours before the arbitration deadline—Comcast transmitted to MASN via e-mail a revised version of the Term Sheet the parties had been negotiating. MASN states that Comcast's e-mail provided Comcast's List of Systems for the first time. MASN explains that Comcast gave no indication that the list excluded any of its systems except for the former-Adelphia systems in Roanoke/Lynchburg and other Virginia areas. Comcast explains that its revised draft of the Term Sheet specifically deleted the language providing for carriage of MASN on ''all Comcast systems'' and inserted language limiting Comcast's carriage obligation to the specific systems listed in the List of Systems. Comcast claims that MASN never asked whether any Comcast systems were excluded from the List of Systems or otherwise raised any objections to the List of Systems. MASN states that Comcast's e-mail accompanying the Term Sheet stated that the revised version ''reflects the deal we've been discussing over the past two days as well as some other clean-up changes.'' MASN claims that this representation is clear that the Term Sheet would memorialize and not alter the parties' discussions, which concerned carriage of MASN to all Comcast subscribers within the MASN Territory with the sole exception of the former-Adelphia subscribers previously discussed. Comcast disagrees, claiming that the deal Comcast and MASN had been discussing was for carriage on most, but not all, of Comcast's systems. Comcast claims that it never committed to carry MASN on all of its systems.

90. MASN claims that it attempted to review the List of Systems, but it lacked any independent means of verifying the contents, particularly with only three hours before the arbitration deadline. In response, Comcast states that MASN never claimed during the negotiations that it did not have adequate time to review the List of Systems. In addition, Comcast states that, because the List of Systems is less than two pages long with only 60 systems listed, it should not have taken hours to review. Comcast also claims that there were multiple public sources available to MASN that would have allowed it to easily determine which Comcast systems were and were not included in the List of Systems. MASN claims that none of these public sources would have allowed MASN to verify the contents of the List of Systems.

91. MASN and Comcast signed the Term Sheet on August 4, 2006, less than one-half hour before the deadline to file for arbitration. The Term Sheet included a Release which required MASN to withdraw its pending program carriage complaint against Comcast. MASN filed a Motion to withdraw its complaint on August 9, 2006. On August 15, 2006, an ALJ released a decision granting the Motion and terminating the proceeding.

92. In January 2007, four months after Comcast's first launch in September 2006 of MASN on some of its systems, MASN learned that Comcast did not intend to launch MASN on certain systems around Harrisburg. MASN then initiated an effort to document the Comcast systems where Comcast did not launch MASN. MASN determined that it had not been launched on Comcast systems in the Harrisburg, Roanoke/Lynchburg, and Tri-Cities DMAs, and in other small systems in Virginia and Pennsylvania as well as in other areas (collectively, the ''Unlaunched Systems''). Some of these systems are not former-Adelphia systems, which MASN claims Comcast never raised as an issue during negotiations. Some of these systems are former-Adelphia systems, but MASN argues that Comcast has provided no indication as to when these systems will be upgraded. Moreover, some former-Adelphia systems have been upgraded but are still not carrying MASN.

93. Thus, the Unlaunched Systems on which MASN is not being carried fall into two relevant categories: (i) Unlaunched Comcast systems in the MASN Territory that Comcast did not acquire from Adelphia (the ''Unlaunched Non-Former-Adelphia Systems''); and (ii) unlaunched Comcast systems in the MASN Territory that Comcast acquired from Adelphia (the ''Unlaunched Former-Adelphia Systems'').

94. For approximately a year, the parties engaged in negotiations for carriage of MASN on the Unlaunched Systems. These negotiations have not resulted in an agreement.

B. Procedural Issues

95. Comcast argues that the MASN complaint should be dismissed on the following procedural grounds. For the reasons discussed below, we decline to dismiss the complaint on any of these grounds.

1. Program Carriage Statute of Limitations

96. Comcast argues that the MASN Complaint is barred by the program carriage statute of limitations. Comcast contends that, of the three events that trigger the running of the program carriage statute of limitations, only the first event—the date on which the parties entered into the Term Sheet—is applicable in this case. Comcast notes that the Term Sheet was executed on August 4, 2006, and thus argues that the statute of limitations expired one year later—on August 4, 2007. Comcast points out that the Complaint was filed on July 1, 2008, almost 11 months after that date. MASN disagrees. MASN notes that the Term Sheet commits future carriage decisions to Comcast's ''discretion,'' but any such discretion is constrained by the non-discrimination obligations of the Act and the Commission's rules. MASN states that its Complaint is based on Comcast's discriminatory refusal to carry MASN on the Unlaunched Systems since 2007.

97. Comcast argues that MASN's claim regarding post-Term Sheet conduct is a new claim which MASN raised for the first time in its Reply. MASN disagrees, explaining that its Complaint was clear that its legal claims focused on Comcast's post-Term Sheet conduct. Based on our examination of the pleadings, we agree with MASN that its claim regarding post-Term Sheet conduct was not raised for the first time in its Reply. MASN explains that from the time it discovered that Comcast would not carry MASN on the Unlaunched Systems until the filing of its Complaint in July 2008, MASN attempted to reach a carriage agreement with Comcast. Because those negotiations had appeared to reach an impasse in March 2008, MASN sent a notice letter to Comcast on March 7, 2008. MASN filed its Complaint on July 1, 2008, well within one year of notifying Comcast, as required by Section 76.1302(f)(3).

98. In any event, Comcast argues that there can be no ''refusal to negotiate'' or ''refusal to carry'' with respect to any Comcast system in the MASN Territory because a Term Sheet and Release were already executed between the parties in August 2006. MASN responds that this line of argument is a contract-based defense to MASN's carriage claims that is legally and factually unfounded. Comcast also claims that there is no ''refusal to carry'' because Comcast carries MASN in the vast majority of Comcast systems in the MASN Territory. MASN responds that there is no legal authority to support Comcast's view that carriage of MASN on some Comcast systems extinguishes MASN's legal right to enforce its program carriage rights with respect to other Comcast systems.

99. We conclude that MASN filed its program carriage complaint in compliance with the program carriage statute of limitations. MASN's claims regarding program carriage discrimination apply to Comcast's refusal to exercise its discretion to carry MASN on the Unlaunched Systems after the Term Sheet was signed. As MASN notes, the Term Sheet committed Comcast's future carriage decisions, including carriage on systems not included in the List of Systems, to Comcast's ''discretion.'' The Term Sheet, however, does not indicate that MASN waived its statutory program carriage rights with respect to Comcast's exercise of such discretion. Accordingly, MASN's claims based on Comcast's exercise of its discretion pursuant to the Term Sheet are not subject to the one-year limitations period in Section 76.1302(f)(1). MASN explains that its negotiations with Comcast for carriage of MASN on the Unlaunched Systems appeared to reach an impasse in March 2008. MASN filed its program carriage complaint within one year of this date and within one year of its pre-filing notice. Accordingly, MASN filed its complaint in compliance with the limitations period in Section 76.1302(f)(3). The EchoStar case cited by Comcast is inapposite. *EchoStar Communications Corp.* v. *Speedvision Network, L.L.C. and Outdoor Life Network, L.L.C.,* Memorandum Opinion & Order, 14 FCC Rcd 9327 (CSB, 1999), *aff'd, EchoStar Communications Corp.* v. *Speedvision Network, L.L.C. and Outdoor Life Network, L.L.C.,* Memorandum Opinion & Order, 16 FCC Rcd 4949 (2001). In that decision, the Commission did not hold that a refusal to sell claim is barred when the parties reached a carriage agreement over one year earlier.

2. Res Judicata

100. Comcast claims that MASN's complaint is barred by the doctrine of *res judicata.* As required by the Release, MASN voluntarily sought and received from the Commission dismissal of its 2005 Complaint. Comcast asserts that voluntary dismissal with prejudice of a complaint constitutes a final judgment on the merits as to all claims encompassed therein. MASN disagrees, arguing that *res judicata* only applies where the prior and subsequent actions share a ''common nucleus of operative facts.'' MASN's past complaint against Comcast concerned Comcast's discriminatory refusal to carry MASN in response to its carriage requests beginning in 2005. MASN claims that the current action, however, is forward-looking and concerns Comcast's discriminatory refusal to carry MASN after the August 2006 date of the Release.

101. We conclude that the MASN complaint is not barred by *res judicata.* MASN's claims regarding program carriage discrimination apply to Comcast's refusal to exercise its discretion to carry MASN on the Unlaunched Systems after the parties settled their previous disputes and signed the Term Sheet. This presents a different set of facts and circumstances than those presented in the 2005 Complaint.

C. Similarly Situated

102. MASN claims that it is similarly situated to CSN–MA in the southwestern Virginia DMAs and to CSN–P in the Harrisburg DMA because the networks are all RSNs and they compete head-to-head in the same geographic areas. MASN explains that it is an RSN that provides live sports programming of major professional sports teams (the Orioles and Nationals). Similarly, Comcast's affiliated RSNs carry major professional sports programming throughout Comcast's footprint (including the Washington Wizards and Capitals (in the case of CSN–MA) and the Philadelphia Phillies and Flyers (in the case of CSN–P)). Comcast has not attempted to demonstrate that MASN, CSN–MA, and CSN–P are not similarly situated.

D. Differential Treatment

103. MASN explains that Comcast treats CSN–MA and CSN–P differently than MASN: On the majority of the Unlaunched Systems, Comcast carries CSN–P and/or CSN–MA, but Comcast has refused to carry MASN on those same systems.

E. Harm to Ability To Compete

104. As required by the program carriage statute and rules, MASN has provided evidence that Comcast's refusal to carry MASN on the Unlaunched Systems restrains its ability to compete fairly by (i) Preventing MASN from achieving maximum subscribership; (ii) restraining MASN's ability to compete for advertising revenues; (iii) restraining MASN's ability to compete for sports programming rights; and (iv) increasing MASN's costs. MASN has put forth evidence demonstrating that as an RSN it needs access to the maximum number of subscribers within its geographic footprints in order to compete optimally for advertisers and sports programming rights. In response, Comcast explains that MASN is carried very broadly in its territory, including by Comcast, DIRECTV, DISH Network, Cox, Verizon, RCN, and many others. Moreover, Comcast explains that MASN reaches over 5 million MVPD subscribers, making it one of the largest RSNs in the country. Comcast notes that it is carrying MASN to a number of subscribers and there is no evidence that its refusal to carry MASN in the ''outer reaches'' of Harrisburg and southwestern Virginia has in any way harmed MASN or affected its ability to compete.

F. Alleged Contract-Based, Business and Editorial Justifications for Comcast's Refusal to Carry MASN on the Unlaunched Systems

105. Comcast offers a number of contract-based and alleged business and editorial justifications for its decision to refrain from carrying MASN on the Unlaunched Systems.

1. Contract-Based Justifications

a. Term Sheet

(i) Unlaunched Non-Former-Adelphia Systems

106. Comcast argues that the unambiguous terms of the Term Sheet do not obligate it to carry MASN on the Unlaunched Non-Former-Adelphia Systems because those systems are not included in the List of Systems attached to the Term Sheet. Comcast asserts that the exclusion of these systems from the List of Systems was ''an important part of the negotiated compromise'' that led to the settlement of the carriage dispute between Comcast and MASN. MASN notes that the Term Sheet, however, commits future carriage decisions to Comcast's ''discretion,'' which is constrained by the non-discrimination obligations of the program carriage rules. By signing the Term Sheet, MASN

claims that it did not forfeit its rights to insist that Comcast abide by its program carriage obligations with respect to any Comcast system within the MASN Territory.

(ii) Unlaunched Former-Adelphia Systems

107. Comcast argues that, under the unambiguous terms of the Term Sheet, it is not obligated to carry MASN on the Unlaunched Former-Adelphia Systems because those systems are not included in the List of Systems. MASN states that it agreed to Comcast's proposal to exclude certain former Adelphia systems in Roanoke/Lynchburg and other small Virginia communities based on Comcast's representation that there was not sufficient capacity to carry MASN on these systems at the time. MASN explains that Comcast represented to the Commission that it would rapidly upgrade the former Adelphia systems it acquired in 2006, a representation that was crucial to the Commission's approval of the Adelphia transaction. MASN states that, given assurances made by Comcast to the Commission that it would soon upgrade the Former-Adelphia systems, thereby providing sufficient capacity to MASN, MASN viewed Comcast's representations to the Commission as sufficient protection that MASN would eventually be launched on the Former-Adelphia systems. Comcast states that it never committed to launch MASN in Roanoke and other Former-Adelphia systems in Virginia once those systems were upgraded, nor is such a commitment reflected in the Term Sheet. MASN notes that, as with the Non-Former-Adelphia Systems, the Term Sheet commits future carriage decisions to Comcast's ''discretion,'' which is constrained by the non-discrimination obligations of the program carriage rules. By signing the Term Sheet, MASN claims that it did not forfeit its rights to insist that Comcast abide by its program carriage obligations with respect to any Comcast system within the MASN Territory.

b. Release

108. Comcast argues that the Term Sheet and Release comprehensively settled MASN's 2005 program carriage complaint against Comcast, in which MASN requested carriage on ''all Comcast systems,'' including the Harrisburg and the southwestern Virginia systems, and thereby relinquished any right MASN may have had to seek any different deal with Comcast covering Comcast's cable systems in the MASN Territory. MASN notes, however, that the Release covers only conduct ''until the date of this Release clause''—that is, up until August 2006. MASN's complaint, however, concerns Comcast's refusal to exercise its discretion to carry MASN since 2007 when MASN discovered it was not being carried on the Unlaunched Systems, well after the date of the Release. Accordingly, MASN contends that the Release does not justify Comcast's decision to refuse to carry MASN on the Unlaunched Systems but to carry its affiliated RSNs.

2. Editorial and Business Justifications

109. Comcast argues that its refusal to carry MASN on the Unlaunched Systems was based on its editorial and business judgment that carriage on those systems was not justified in light of a number of factors, including MASN's carriage cost (both licensee fee and bandwidth) and its allegedly low consumer appeal.

a. License Fee

110. Comcast contends that MASN would be among the most expensive networks carried in its Harrisburg and southwestern Virginia systems. MASN contends that Comcast has submitted no evidence, however, demonstrating that the cost of carrying MASN is materially greater than the cost of carrying Comcast's affiliated RSNs in the relevant DMAs. MASN claims that Comcast provides no justification for applying a stricter cost standard to unaffiliated programming than to affiliated programming. Moreover, while Comcast claims that a network's license fee is a relevant consideration in making carriage decisions, MASN argues that Comcast has not submitted any evidence that its decision-makers compared the cost of MASN to the cost of its affiliated RSNs in deciding to deny carriage to MASN on the Unlaunched Systems but to grant carriage to Comcast's affiliated RSNs. MASN provides the following evidence which it claims justifies its license fee for carriage on the Unlaunched Systems: (i) The carriage rates proposed by MASN are fair and reasonable in light of the popularity and value of live sports programming that MASN offers; (ii) every other major MVPD in the relevant parts of the MASN Territory other than Comcast (such as Cox, DIRECTV, and DISH Network) has agreed to carry MASN on their basic or expanded basic tier (or equivalent) at the rates MASN has proposed for Comcast; (iii) Comcast has agreed to the same carriage terms for MASN on its systems in other areas (some of which are farther away from Baltimore and Washington than the Harrisburg and southwestern Virginia DMAs); and (iv) MASN's rate is comparable to what other RSNs charge and MVPDs pay for comparable extended inner-market programming.

b. Bandwidth

111. Comcast argues that, because the Term Sheet requires carriage of MASN on Comcast's expanded basic tier, Comcast would be required to devote scarce analog capacity to carriage of the network. Moreover, Comcast notes that MASN would require two analog channels to accommodate both the Orioles' and Nationals' games. MASN argues that Comcast has provided no evidence regarding its bandwidth constraints on the Unlaunched Systems. In addition, MASN contends that Comcast has failed to justify why its alleged bandwidth constraints on the Unlaunched Systems justified denying carriage to MASN but granting carriage to Comcast's affiliated RSNs.

c. Demand

112. Comcast argues that its refusal to carry MASN on the Unlaunched Systems is justified based on MASN's low consumer appeal. Comcast notes that, even in its core Baltimore and Washington, DC, markets, MASN has the lowest viewership ratings of any RSN in the country, attracting less than one-third the average number of households of any other RSN. MASN argues that Comcast has submitted no evidence, however, demonstrating that the demand for MASN is materially different than the demand for Comcast's affiliated RSNs in the relevant DMAs. MASN also alleges that Comcast provides no justification for applying a stricter demand standard to unaffiliated programming than to affiliated programming. Moreover, while Comcast claims that demand is a relevant consideration in making carriage decisions, MASN submits that Comcast has not provided any evidence that its decision-makers compared the demand for MASN to the demand for its affiliated RSNs in deciding to deny carriage to MASN on the Unlaunched Systems but to grant carriage to Comcast's affiliated RSNs. MASN argues that the following demonstrates consumer demand for its programming on the Unlaunched Systems based on the following factors: (i) The decisions of 21 other major MVPDs throughout the MASN Territory to carry MASN (including Charter, Cox, DIRECTV, DISH Network, RCN, and Verizon); (ii) Comcast's efforts to keep the rights to the Orioles games and to acquire the rights to the Nationals games, both of which are now shown on MASN; (iii) prior to the launch of MASN, Comcast's

affiliated RSN carried Orioles games in the Harrisburg DMA; (iv) every other major MVPD serving Harrisburg (*e.g.*, DIRECTV, DISH Network) except Comcast has agreed to carry MASN (while Comcast notes that some small cable operators in Harrisburg that do not carry MASN, we do not believe that the decisions of a few small cable operators cast doubt on MASN's value given the evidence of extensive carriage of MASN by other MVPDs in Harrisburg); (v) prior to the launch of MASN, Comcast's affiliated RSN carried Orioles games on systems in southwestern Virginia; (vi) other major MVPDs serving southwestern Virginia (Cox, DIRECTV, DISH Network) have agreed to carry MASN (while Comcast argues that, with the exception of Cox's carriage of MASN in Roanoke, most other cable operators serving southwestern Virginia have made the same decision as Comcast not to carry MASN, we do not believe that the decisions of certain cable operators cast doubt on MASN's value given the evidence of extensive carriage of MASN by other MVPDs in southwestern Virginia, such as DIRECTV and DISH Network); (vii) evidence that demand for MASN's programming is comparable to or eclipses demand for Comcast's affiliated programming in MASN's core markets on a per-game ratings basis; (viii) MASN is among the top RSNs in the country with respect to live major professional sports programming; and (ix) MASN carries other programming of interest to subscribers in the Harrisburg and southwestern Virginia DMAs, including sporting events of local colleges. MASN also argues that Comcast's claim that there is no demand for MASN in Harrisburg is contradicted by the fact that Comcast has launched MASN on other systems in southern Pennsylvania, such as in York, Pennsylvania (25 miles from Harrisburg). Moreover, MASN submits that Comcast's claim that there is no demand for MASN on the periphery of the MASN Territory is contradicted by the fact that it carries CSN–MA on the same cable systems in southwestern Virginia despite the fact that CSN–MA's core sports programming of Washington Wizards and Capitals games is also based in the Washington DMA.

G. Conclusion

113. In the *Second Report and Order,* the Commission stated that it would identify specific behavior that constitutes discrimination on a case-by-case basis ''because the practices at issue will necessarily involve behavior that must be evaluated within the context of specific facts pertaining to each negotiation.'' *Second Report* and *Order,* 58 FR 60390, November 16, 1993. Any complainant alleging a violation of the prohibition in Section 616(a)(3) on discrimination must demonstrate that the alleged discrimination is ''on the basis of affiliation or nonaffiliation'' of a vendor, and that ''the effect of the conduct that prompts the complaint is to unreasonably restrain the ability of the complainant to compete fairly.'' After reviewing the pleadings and supporting documentation filed by the parties, we find that MASN has established a *prima facie* case in the above-referenced case under Section 76.1301(c). We also find that the pleadings and supporting documentation present several factual disputes as to whether Comcast discriminated against MASN in favor of its affiliated services. Accordingly, we direct the ALJ to make and return a Recommended Decision to the Commission pursuant to the procedures set forth below within 60 days after release of this *Order* (*i.e.*, by December 9, 2008).

IV. Referral to Administrative Law Judge or Alternative Dispute Resolution

114. We direct that an Administrative Law Judge resolve the factual disputes with respect to the claims and return a recommended decision and a recommended remedy, if necessary, to the Commission within 60 days of the release of this *Order* (*i.e.*, by December 9, 2008). Pursuant to Section 76.7(g)(2) of the Commission's rules, the parties will have ten days following release of this *Order* (*i.e.*, by October 20, 2008) to elect to resolve this dispute through ADR. 47 CFR 76.7(g)(2). Each party will notify the Commission, in writing, of its election within 10 days of release of this *Order* (*i.e.*, by October 20, 2008) and, in the event that ADR is chosen, will update the Commission monthly on the status of the ADR process. If the parties elect to resolve the dispute through ADR, the 60-day period for review by an Administrative Law Judge will be tolled. In the event that the parties fail to reach a settlement through the ADR process, the parties shall promptly notify the Commission in writing, and the 60-day period will resume upon receipt of such notification.

115. Upon receipt of the Administrative Law Judge's recommended decision and remedy, the Commission will make the requisite legal determinations as to whether (i) the defendant has discriminated against the complainant's programming in favor of its own programming, with the effect of unreasonably restraining the complainant's ability to compete fairly in violation of Section 76.1301(c); and (ii) only in the case of NFL Network v Comcast, whether Comcast has demanded a financial interest in the NFL's programming in exchange for carriage in violation of Section 76.1301(a). If necessary, the Commission will then decide upon appropriate remedies.

V. Ordering Clauses

A. WealthTV v. TWC

116. Accordingly, *it is ordered,* that Herring Broadcasting, Inc. d/b/a/ WealthTV's Complaint against Time Warner Cable Inc. is *Designated for Hearing* at a date and place to be specified in a subsequent order by an Administrative Law Judge for a recommended determination of the following issues:

(a) Whether the defendant has discriminated against the complainant's programming in favor of its own programming, with the effect of unreasonably restraining the complainant's ability to compete fairly in violation of Section 76.1301(c);

(b) If the Administrative Law Judge determines that the defendant has discriminated against the complainant's programming in violation of Section 76.1301(c), the appropriate price, terms and conditions on which the complainant's programming should be carried on defendant's systems and such other remedies as the Administrative Law Judge recommends.

117. *It is further ordered,* that pursuant to Section 616 of the Communications Act of 1934, as amended, 47 U.S.C. 536, and 47 CFR 76.1300–1302, Herring Broadcasting, Inc. d/b/a WealthTV and Time Warner Cable Inc. submit to the Commission, in writing within ten days of this *Order* (*i.e.*, by October 20, 2008), their respective elections as to whether each wishes to proceed to Alternative Dispute Resolution and, in the event that Alternative Dispute Resolution is chosen, monthly update the Commission on the status of that process.

118. *It is further ordered,* that the Administrative Law Judge, within 60 days of this *Order* (*i.e.*, by December 9, 2008), will resolve all factual disputes and submit a recommended decision and remedy, if appropriate.

119. *It is further ordered,* that if the parties elect Alternative Dispute Resolution, the period for Administrative Law Judge review shall be tolled, until such time as the parties notify the Commission that they have failed to reach a settlement through Alternative Dispute Resolution.

B. WealthTV v. BHN

120. Accordingly, *it is ordered,* that Herring Broadcasting, Inc. d/b/a/ WealthTV's Complaint against Bright House Networks, LLC is *Designated for Hearing* at a date and place to be specified in a subsequent order by an Administrative Law Judge for a recommended determination of the following issues:

(a) Whether the defendant has discriminated against the complainant's programming in favor of its own programming, with the effect of unreasonably restraining the complainant's ability to compete fairly in violation of Section 76.1301(c);

(b) If the Administrative Law Judge determines that the defendant has discriminated against the complainant's programming in violation of Section 76.1301(c), the appropriate price, terms and conditions on which the complainant's programming should be carried in defendant's systems and such other remedies as the Administrative Law Judge recommends.

121. *It is further ordered,* that pursuant to Section 616 of the Communications Act of 1934, as amended, 47 U.S.C. 536, and 47 CFR 76.1300–1302, Herring Broadcasting, Inc. d/b/a WealthTV and Bright House Networks, LLC submit to the Commission, in writing within ten days of this *Order* (*i.e.*, by October 20, 2008), their respective elections as to whether each wishes to proceed to Alternative Dispute Resolution and, in the event that Alternative Dispute Resolution is chosen, monthly update the Commission on the status of that process.

122. *It is further ordered,* that the Administrative Law Judge, within 60 days of this *Order* (*i.e.*, by December 9, 2008), will resolve all factual disputes and submit a recommended decision and remedy, if appropriate.

123. *It is ordered,* that if the parties elect Alternative Dispute Resolution, the period for Administrative Law Judge review shall be tolled, until such time as the parties notify the Commission that they have failed to reach a settlement through Alternative Dispute Resolution.

C. WealthTV v. Cox

124. Accordingly, *it is ordered,* that Herring Broadcasting, Inc. d/b/a/ WealthTV's Complaint against Cox Communications, Inc. is *Designated for Hearing* at a date and place to be specified in a subsequent order by an Administrative Law Judge for a recommended determination of the following issues:

(a) Whether the defendant has discriminated against the complainant's programming in favor of its own programming, with the effect of unreasonably restraining the complainant's ability to compete fairly in violation of Section 76.1301(c);

(b) If the Administrative Law Judge determines that the defendant has discriminated against the complainant's programming in violation of Section 76.1301(c), the appropriate price, terms and conditions on which the complainant's programming should be carried on defendant's systems and such other remedies as the Administrative Law Judge recommends.

125. *It is further ordered,* that pursuant to Section 616 of the Communications Act of 1934, as amended, 47 U.S.C. 536, and 47 CFR 76.1300–1302, Herring Broadcasting, Inc. d/b/a WealthTV and Cox Communications, Inc. submit to the Commission, in writing within ten days of this *Order* (*i.e.*, by October 20, 2008), their respective elections as to whether each wishes to proceed to Alternative Dispute Resolution and, in the event that Alternative Dispute Resolution is chosen, monthly update the Commission on the status of that process.

126. *It is further ordered,* that the Administrative Law Judge, within 60 days of this Order (*i.e.*, by December 9, 2008), will resolve all factual disputes and submit a recommended decision and remedy, if appropriate.

127. *It is further ordered,* that if the parties elect Alternative Dispute Resolution, the period for Administrative Law Judge review shall be tolled, until such time as the parties notify the Commission that they have failed to reach a settlement through Alternative Dispute Resolution.

D. WealthTV v. Comcast

128. Accordingly, *it is ordered,* that Herring Broadcasting, Inc. d/b/a/ WealthTV's Complaint against Comcast Corporation is *Designated for Hearing* at a date and place to be specified in a subsequent order by an Administrative Law Judge for a recommended determination of the following issues:

(a) Whether the defendant has discriminated against the complainant's programming in favor of its own programming, with the effect of unreasonably restraining the complainant's ability to compete fairly in violation of Section 76.1301(c);

(b) If the Administrative Law Judge determines that the defendant has discriminated against the complainant's programming in violation of Section 76.1301(c), the appropriate price, terms and conditions on which the complainant's programming should be carried on defendant's systems and such other remedies as the Administrative Law Judge recommends.

129. *It is further ordered,* that pursuant to Section 616 of the Communications Act of 1934, as amended, 47 U.S.C. 536, and 47 CFR 76.1300–1302, Herring Broadcasting, Inc. d/b/a WealthTV and Comcast Corporation submit to the Commission, in writing within ten days of this *Order* (*i.e.*, by October 20, 2008), their respective elections as to whether each wishes to proceed to Alternative Dispute Resolution and, in the event that Alternative Dispute Resolution is chosen, monthly update the Commission on the status of that process.

130. *It is further ordered*, that the Administrative Law Judge, within 60 days of this *Order* (*i.e.*, by December 9, 2008), will resolve all factual disputes and submit a recommended decision and remedy, if appropriate.

131. *It is further ordered*, that if the parties elect Alternative Dispute Resolution, the period for Administrative Law Judge review shall be tolled, until such time as the parties notify the Commission that they have failed to reach a settlement through Alternative Dispute Resolution.

E. NFL v. Comcast

132. Accordingly, *it is ordered*, that NFL Enterprises LLC's Complaint against Comcast Corporation is *Designated for Hearing* at a date and place to be specified in a subsequent order by an Administrative Law Judge for a recommended determination of the following issues:

(a) Whether the defendant has discriminated against the complainant's programming in favor of its own programming, with the effect of unreasonably restraining the complainant's ability to compete fairly in violation of Section 76.1301(c);

(b) Whether the defendant has demanded a financial interest in the complainant's programming in exchange for carriage in violation of Section 76.1301(a);

(c) If the Administrative Law Judge determines that the defendant has discriminated against the complainant's programming in violation of Section 76.1301(c) or demanded a financial interest in the complainant's programming in exchange for carriage in violation of Section 76.1301(a), the appropriate price, terms and conditions on which the complainant's programming should be carried on defendant's systems and such other

remedies as the Administrative Law Judge recommends.

133. *It is further ordered,* that pursuant to Section 616 of the Communications Act of 1934, as amended, 47 U.S.C. 536, and 47 CFR 76.1300–1302, NFL Enterprises LLC and Comcast Corporation submit to the Commission, in writing within ten days of this *Order* (*i.e.*, by October 20, 2008), their respective elections as to whether each wishes to proceed to Alternative Dispute Resolution and, in the event that Alternative Dispute Resolution is chosen, monthly update the Commission on the status of that process.

134. *It is further ordered,* that the Administrative Law Judge, within 60 days of this *Order* (*i.e.*, by December 9, 2008), will resolve all factual disputes and submit a recommended decision and remedy, if appropriate.

135. *It is further ordered,* that if the parties elect Alternative Dispute Resolution, the period for Administrative Law Judge review shall be tolled, until such time as the parties notify the Commission that they have failed to reach a settlement through Alternative Dispute Resolution.

F. MASN v. Comcast

136. Accordingly, *it is ordered,* that TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network's Complaint against Comcast Corporation is *Designated for Hearing* at a date and place to be specified in a subsequent order by an Administrative Law Judge for a recommended determination of the following issues:

(a) Whether the defendant has discriminated against the complainant's programming in favor of its own programming, with the effect of unreasonably restraining the complainant's ability to compete fairly in violation of Section 76.1301(c);

(b) If the Administrative Law Judge determines that the defendant has discriminated against the complainant's programming in violation of Section 76.1301(c), the appropriate price, terms and conditions on which the complainant's programming should be carried on defendant's systems and such other remedies as the Administrative Law Judge recommends.

137. *It is further ordered,* that pursuant to Section 616 of the Communications Act of 1934, as amended, 47 U.S.C. 536, and 47 CFR 76.1300–1302, TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network and Comcast Corporation submit to the Commission, in writing within ten days of this *Order* (*i.e.*, by October 20, 2008), their respective elections as to whether each wishes to proceed to Alternative Dispute Resolution and, in the event that Alternative Dispute Resolution is chosen, monthly update the Commission on the status of that process.

138. *It is further ordered,* that the Administrative Law Judge, within 60 days of this Order (*i.e.*, by December 9, 2008), will resolve all factual disputes and submit a recommended decision and remedy, if appropriate.

139. *It is further ordered,* that if the parties elect Alternative Dispute Resolution, the period for Administrative Law Judge review shall be tolled, until such time as the parties notify the Commission that they have failed to reach a settlement through Alternative Dispute Resolution.

G. General Ordering Clauses

140. *It is further ordered* that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), in order to avail itself of the opportunity to be heard, each party to an above-captioned proceeding, in person or by its attorney, shall file with the Commission, by October 17, 2008, a written appearance stating that the party will appear on the date fixed for hearing and present evidence on the issues specified herein. In light of the deadline for a Recommended Decision contained in this *Order,* the deadline for written appearances set forth in 47 CFR 1.221 is waived and replaced with the deadline set forth above.

141. *It is further ordered* that, if any complainant in an above-captioned proceeding fails to file a written appearance by the deadline specified above, or has not filed prior to that deadline, a petition to accept, for good cause shown, a written appearance beyond the deadline, the Presiding Administrative Law Judge shall dismiss the relevant above-captioned proceeding with prejudice for failure to prosecute.

142. *It is further ordered* that all parties to the above-captioned proceedings will be served with a copy of this Order and the Erratum thereto by e-mail and by certified mail, return receipt requested.

143. *It is further ordered* that the Chief, Enforcement Bureau, shall be made a party to each of the above-captioned proceedings without the need to file a written appearance and will determine the Enforcement Bureau's level of participation in the proceedings.

144. *It is further ordered* that a copy of this Hearing Designation Order and the Erratum thereto or a summary thereof shall be published in the **Federal Register**.

Federal Communications Commission.

Monica Shah Desai,

Chief, Media Bureau.

[FR Doc. E8–26147 Filed 10–31–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1337]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved the private sector adjustment factor (PSAF) for 2009 of $62.2 million and the 2009 fee schedules for Federal Reserve priced services and electronic access. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF. The Board has also approved maintaining the current earnings credit rate on clearing balances.

DATES: The new fee schedules and earnings credit rate become effective January 2, 2009.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Jeffrey C. Marquardt, Deputy Director (202/452–2360); Jeffrey S.H. Yeganeh, Manager, Retail Payments (202/728–5801); Linda S. Healey, Senior Financial Services Analyst (202/452–5274), Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF and earnings credits on clearing balances: Gregory L. Evans, Deputy Associate Director (202/452–3945); Brenda L. Richards, Manager, Financial Accounting (202/452–2753); or Rebekah Ellsworth, Financial Analyst (202/452–3480), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) only, please call 202/263–4869. Copies of the 2009 fee schedules for the check service are available from the Board, the Federal Reserve Banks, or the Reserve Banks' financial services Web site at *http://www.frbservices.org.*

SUPPLEMENTARY INFORMATION:

I. Private Sector Adjustment Factor and Priced Services

A. *Overview*—Each year, as required by the Monetary Control Act of 1980,

the Reserve Banks set fees for priced services provided to depository institutions. These fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses, as well as the return on equity (profit) that would have been earned if a private business firm provided the services. The imputed costs and imputed profit are collectively referred to as the PSAF. Similarly, investment income is imputed and netted with related direct costs associated with clearing balances to estimate net income on clearing balances (NICB). From 1998 through 2007, the Reserve Banks recovered 99.1 percent of their total expenses (including special project costs and imputed expenses) and targeted after-tax profits or return on equity (ROE) for providing priced services.[1]

Table 1 summarizes 2007, 2008 estimated, and 2009 budgeted cost-recovery rates for all priced services. Cost recovery is estimated to be 98.1 percent in 2008 and budgeted to be 93.7 percent in 2009. The check service accounts for approximately three-quarters of the total cost of priced services and thus significantly influences the aggregate cost-recovery rate. The electronic services (FedACH®, the Fedwire® Funds Service and National Settlement Service, and the Fedwire® Securities Service) account for approximately a quarter of total costs.[2]

TABLE 1—AGGREGATE PRICED SERVICES PRO FORMA COST AND REVENUE PERFORMANCE [a]

[$ Millions]

Year	+1 [b] Revenue	+2 [c] Total expense	+3 Net income (ROE)[1–2]	+4 [d] Targeted ROE	+5 [e] Recovery rate after targeted ROE [1/(2+4)]
2007	1,012.3	913.3	98.9	80.4	101.9%
2008 (estimate)	853.0	803.3	49.7	66.5	98.1%
2009 (budget)	692.4	707.9	−15.6	31.1	93.7%

[a] Calculations in this table and subsequent pro forma cost and revenue tables may be affected by rounding.

[b] Revenue includes net income on clearing balances. Clearing balances are assumed to be invested in a broad portfolio of investments, such as short-term Treasury securities, government agency securities, commercial paper, long-term corporate bonds, and money market funds. To impute income, a constant spread is determined from the historical average return on this portfolio and applied to the rate used to determine the cost of clearing balances. NICB equals the imputed income from these investments less earnings credits granted to holders of clearing balances. The cost of earnings credits is based on the discounted three-month Treasury bill rate.

[c] The calculation of total expense includes operating, imputed, and other expenses. Imputed and other expenses include taxes, FDIC insurance, Board of Governors' priced services expenses, the cost of float, and interest on imputed debt, if any. Credits or debits related to the accounting for pensions under FAS 87 are also included.

[d] Targeted ROE is the after-tax ROE included in the PSAF.

[e] The recovery rates in this and subsequent tables do not reflect the unamortized gains or losses that must be recognized in accordance with FAS 158. Future gains or losses, and their effect on cost recovery, cannot be projected.

Table 2 portrays an overview of cost-recovery performance for the ten-year period from 1998 to 2007, 2007, 2008 budget, 2008 estimate, and 2009 budget by priced service.

TABLE 2—PRICED SERVICES COST RECOVERY

[Percent]

Priced service	1998–2007	2007	2008 Budget	2008 Estimate	2009 Budget [a]
All services	99.1	101.9	101.1	98.1	93.7
Check	97.8	100.7	100.5	97.2	91.5
FedACH	105.1	107.6	102.0	101.3	100.0
Fedwire Funds and NSS	104.1	107.3	105.4	100.8	98.3
Fedwire Securities	102.8	103.7	104.8	102.1	100.5

[a] 2009 budget figures reflect the latest data from the Reserve Banks. The Reserve Banks will transmit final budget data to the Board in November 2008, for Board consideration in December 2008.

1. *2008 Estimated Performance*—The Reserve Banks estimate that they will recover 98.1 percent of the costs of providing priced services, including imputed expenses and targeted ROE, compared with a budgeted recovery rate of 101.1 percent, as shown in Table 2. While the FedACH, the Fedwire Funds and National Settlement, and the Fedwire Securities Services are expected to achieve full cost recovery in 2008, the check service is expected to recover 97.2 percent of its costs. Overall, the Reserve Banks expect to recover all actual and imputed costs of providing priced services and earn a net income of $49.7 million, compared with a targeted ROE of $66.5 million. This shortfall is largely driven by lower-than-expected NICB and increased pension costs.[3] In addition to these factors that affect all

[1] The ten-year recovery rate is based on the pro forma income statement for Federal Reserve priced services published in the Board's *Annual Report.*

Effective December 31, 2006, the Reserve Banks implemented Financial Accounting Standards No. 158: *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans* (FAS 158), which resulted in recognizing a reduction in equity related to the priced services' benefit plans. Including this reduction in equity results in cost recovery of 96.7 percent for the ten-year period. This measure of long-run cost recovery is also published in the Board's *Annual Report.*

[2] FedACH and Fedwire are registered servicemarks of the Reserve Banks.

[3] The 2008 estimated NICB is significantly lower than budgeted. For the year, NICB was projected to be $125.8 million and is now estimated at $86.9 million. This shortfall is due primarily to the decline in short-term Treasury bill rates. The 2008 estimated pension debit is $4.4 million higher than budgeted, due to updated demographic data that generated actuarial losses.

services, the check service will incur one-time costs associated with the next phase of the Reserve Banks' check restructuring efforts, which will result in less than full cost recovery for that service.

2. *2009 Private Sector Adjustment Factor*—The 2009 PSAF for Reserve Bank priced services is $62.2 million. This amount represents a decrease of $50.9 million from the 2008 PSAF of $113.1 million. This reduction is the result of a decrease in the cost of equity due to a lower required return on equity and a lower amount of imputed equity.

3. *2009 Projected Performance*—The Reserve Banks project that the FedACH and Fedwire Securities Services will fully recover their costs in 2009. The Reserve Banks also project that the Fedwire Funds and National Settlement Services will achieve close to full cost recovery and that the check service will substantially under recover its costs. Overall, the Reserve Banks project a priced services cost-recovery rate of 93.7 percent in 2009, with a net loss of $15.6 million, compared to a targeted ROE of $31.1 million. The projected priced services' under recovery is heavily influenced by the check service's cost recovery rate, which is expected to be 91.5 percent, as revenues decline due largely to projected reductions in check deposits and an increasing proportion of checks being presented electronically. The other significant factors affecting the check service's cost recovery are projected reductions in NICB and increased pension costs.

The major risks to the Reserve Banks' ability to achieve their targeted cost recovery rates are substantial declines in clearing balances due to the implementation of interest on reserves and its effect on imputed income as well as unanticipated increases in pension costs. In addition, greater-than-expected check volume declines due to increased competition from correspondent banks and other service providers could adversely affect cost recovery. Other risks include costs associated with unanticipated problems with technological upgrades and check office restructurings.

4. *2009 Pricing*—The following summarizes the Reserve Banks' changes in fee schedules for priced services in 2009:

Check

- The Reserve Banks will increase the fees for forward paper check collection 26 percent and paper return check products 33 percent.
- The Reserve Banks will increase FedForward fees 3.8 percent for checks presented electronically and 37 percent for checks presented as substitute checks. The Reserve Banks will also raise FedReturn fees 26 percent. Because the fees to collect and return checks drawn on depository institutions that accept electronics will be lower than on those that accept paper, the rapid rise in the number of depository institutions that are accepting presentments and returns electronically is expected to result in a 10 percent reduction in the effective price to collect a check electronically and an 8 percent reduction in the effective price to return a check electronically.
- With the 2009 fee changes, the price index for the total check service will have increased 136 percent since 1999.

FedACH

- The Reserve Banks will raise the monthly fees for account servicing from $25 to $37 per routing number, for FedACH settlement from $20 to $37 per routing number, and for information extract files from $20 to $35 per routing number.
- The Reserve Banks will raise the non-electronic input/output fees for paper from $15 per file to $50 per file, and for CD/DVD from $25 to $50 per CD/DVD. The Reserve Banks will increase the fee for facsimile exception returns/notifications of change from $15 to $30 and for voice response returns/notifications of change fees from $2 to $3.
- With the 2009 fee changes, the price index for the FedACH service will have decreased 52.8 percent since 1999.

Fedwire Funds and National Settlement

- The Reserve Banks will introduce a $60 monthly participation fee for Fedwire Funds customers with activity in that month and raise the offline origination and receipt fee from $30 to $40. In addition, the Reserve Banks will increase the National Settlement Service's settlement file charge from $14 to $18 and the offline file origination fee from $25 to $40.
- With the 2009 fee changes, the price index for the Fedwire Funds and National Settlement Services will have decreased 24.8 percent since 1999.

Fedwire Securities

- The Reserve Banks will raise the basic transfer fee from $0.34 to $0.35, the monthly maintenance fee from $16 to $21, and the fees on claims adjustments from $0.30 to $0.60.
- With the 2009 fee changes, the price index for the Fedwire Securities Service will have decreased 36.2 percent since 1999.

5. *2009 Price Index*—Figure 1 compares indexes of fees for the Reserve Banks' priced services with the GDP price index. Compared with the price index for 2008, the price index for all Reserve Bank priced services is projected to increase 26.2 percent in 2009. The price index for paper check and electronic payment services in 2009 are projected to increase 40.7 percent and 2.2 percent, respectively. While the prices for Check 21 services are also increasing, the rapid increase in the number of depository institutions accepting checks electronically is resulting in reductions in the effective prices paid to collect and return checks using Check 21 services. As a result, a Check 21 price index is misleading, given these substantial shifts, and therefore is not shown in the figure 1. For the period 1999 to 2009, the price index for all priced services is expected to increase 81.3 percent. In comparison, for the period 1999 to 2008 the GDP price index increased 24.7 percent.

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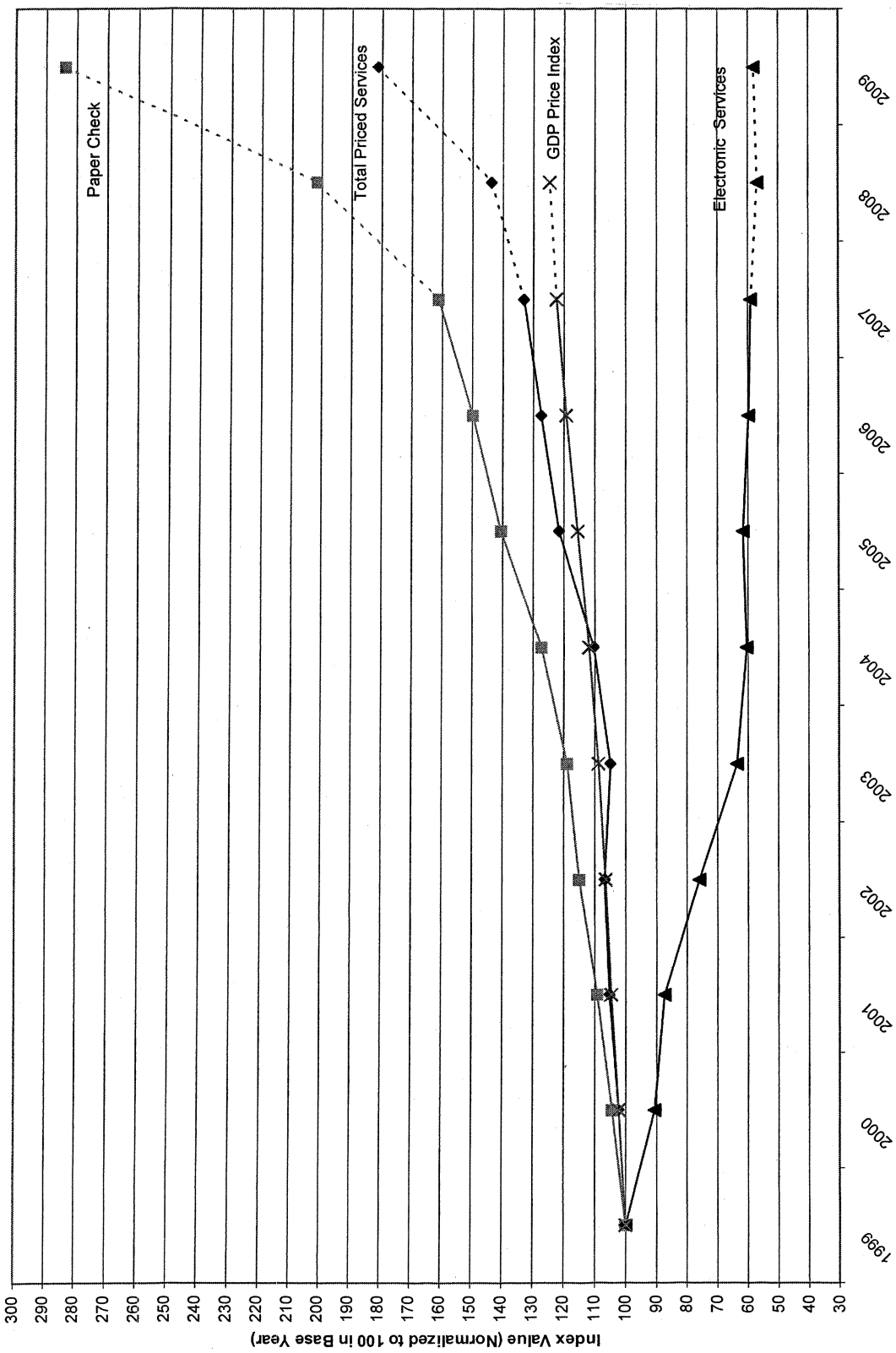
FIGURE 1

PRICED INDEXES FOR FEDERAL RESERVE PRICED SERVICES



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B. *Private Sector Adjustment Factor*—The method for calculating the financing and equity costs in the PSAF requires determining the appropriate imputed levels of debt and equity and then applying the applicable financing rates. In this process, a pro forma balance sheet using estimated assets and liabilities associated with the Reserve Banks' priced services is developed, and the remaining elements that would exist if these priced services were provided by a private business firm are imputed. The same generally accepted accounting principles that apply to commercial-entity financial statements also apply to the relevant elements in the priced-services pro forma financial statements.

The portion of Federal Reserve assets that will be used to provide priced services during the coming year is determined using information on actual assets and projected disposals and acquisitions. The priced portion of these assets is determined based on the allocation of the related depreciation expense. The priced portion of actual Federal Reserve liabilities consists of balances held by depository institutions (DIs) at Reserve Banks for clearing priced-services transactions (clearing balances), and other liabilities such as accounts payable and accrued expenses.

Long-term debt is imputed only when core clearing balances, long-term liabilities, and equity are not sufficient to fund long-term assets or if the interest rate risk sensitivity analysis, which measures the interest rate effect of the difference between interest rate sensitive assets and liabilities, indicates that a 200 basis point change in interest rates would change cost recovery by more than two percentage points.[4] Short-term debt is imputed only when short-term liabilities and clearing balances not used to finance long-term assets are insufficient to fund short-term assets. Imputed equity meets the FDIC requirements for a well-capitalized DI for insurance premium purposes and represents the market capitalization, or shareholder value, for Reserve Bank priced services.[5]

The equity financing rate is the targeted ROE rate produced by the capital asset pricing model (CAPM). In the CAPM, the required rate of return on a firm's equity is equal to the return on a risk-free asset plus a risk premium. To implement the CAPM, the risk-free rate is based on the three-month Treasury bill; the beta is assumed to equal 1.0, which approximates the risk of the market as a whole; and the monthly returns in excess of the risk-free rate over the most recent 40 years are used as the market risk premium. The resulting ROE influences the dollar level of the PSAF because this is the return a shareholder would require in order to invest in a private business firm.

For simplicity, given that federal corporate income tax rates are graduated, state income tax rates vary, and various credits and deductions can apply, an actual income tax expense is not calculated for Reserve Bank priced services. Instead, the Board targets a pretax ROE that would provide sufficient income to fulfill its income tax obligations. To the extent that actual performance results are greater or less than the targeted ROE, income taxes are adjusted using an imputed income tax rate. Because the Reserve Banks provide similar services through their correspondent banking activities, including payment and settlement services, and the amount of imputed equity meets the FDIC requirements for a well-capitalized DI, the imputed income tax rate is the median of the rates paid by the top fifty bank holding companies based on deposit balances over the past five years, adjusted to the extent that they invested in tax-free municipal bonds.

The PSAF also includes the estimated priced-services-related expenses of the Board and imputed sales taxes based on Reserve Bank estimated expenditures. An assessment for FDIC insurance is imputed based on current FDIC rates and projected clearing balances held with the Reserve Banks.

1. *Net Income on Clearing Balances*—The NICB calculation is performed each year along with the PSAF calculation and is based on the assumption that the Reserve Banks invest clearing balances net of an imputed reserve requirement and balances used to finance priced-services assets.[6] The Reserve Banks impute a constant spread, determined by the return on a portfolio of investments, over the three-month Treasury bill rate and apply this investment rate to the net level of clearing balances.[7]

The calculation also involves determining the priced-services cost of earnings credits (amounts available to offset service fees) on contracted clearing balances held, net of expired earnings credits, based on a discounted Treasury bill rate. Rates and clearing balance levels used in the NICB estimate are based on July 2008 rates and clearing balance levels. Because clearing balances are held for clearing priced-services transactions or offsetting priced-services fees, they are directly related to priced services. The net earnings or expense attributed to the investments and the cost associated with holding clearing balances, therefore, are considered net income for priced services.

A few changes to the 2009 NICB estimate have been made as a result of the Board's decision to pay interest on required reserve and excess balances held at Reserve Banks beginning on October 9, 2008. Accordingly, a return on the imputed reserve requirement based on the level of clearing balances on the pro forma balance sheet has been estimated for 2009.[8] Additionally, the priced-services cost of earnings credits has also been changed to compensate clearing balance holders on 100 percent of their contracted clearing balances. Formerly, earnings credits were only paid on 90 percent of contracted clearing balances assuming that a private sector correspondent bank would not compensate respondents for

[4] A portion of clearing balances is used as a funding source for priced-services assets. Long-term assets are partially funded from core clearing balances, which are currently $4 billion. Core clearing balances are considered the portion of the balances that has remained stable over time without regard to the magnitude of actual clearing balances.

[5] The FDIC requirements for a well-capitalized depository institution are (1) a ratio of total capital to risk-weighted assets of 10 percent or greater, (2) a ratio of Tier 1 capital to risk-weighted assets of 6 percent or greater, and (3) a leverage ratio of Tier 1 capital to total assets of 5 percent or greater. The priced services balance sheet has no components of Tier 1 or total capital other than equity; therefore, requirements 1 and 2 are essentially the same measurement.

As used in this context, the term ''shareholder'' does not refer to the actual member banks of the Federal Reserve System, but rather to the implied shareholders who would have an ownership interest if the Reserve Banks' priced services were provided by a private firm.

[6] Reserve requirements are the amount of funds that a DI must hold in reserve against specified deposit liabilities. DIs must hold reserves in the form of vault cash or deposits with Federal Reserve Banks. The dollar amount of a DI's reserve requirement is determined by applying the reserve ratios specified in the Board's Regulation D to the institution's reservable liabilities. The Reserve Banks priced services impute a reserve requirement of ten percent, which is applied to the amount of clearing balances held with the Reserve Banks.

[7] The investment portfolio is composed of investments comparable to a bank holding company's investment holdings, such as short-term Treasury securities, government agency securities, commercial paper, long-term corporate bonds, and money market funds. See table 7 for the investments imputed in 2009.

NICB is projected to be $48.8 million for 2009. This result uses an investment rate equal to a constant spread of 26 basis points over the three-month Treasury bill rate, applied to the clearing balance levels used in the 2009 pricing process. The 2008 NICB estimate is $86.9 million.

[8] The imputed interest income on the imputed reserve requirement is projected to be $15.2 million for 2009. The projected 2009 rate for imputed interest income on the reserve requirement is based on the July 2008 rate of 1.9 percent.

their required reserve balances.[9] Lastly, because all excess balances held at the Reserve Banks will receive explicit interest, the priced services will no longer impute investment income on any portion of excess balances.

2. *Analysis of the 2009 PSAF*—The decrease in the 2009 PSAF is primarily due to an overall reduction in the level of imputed equity and in the targeted ROE rate provided by the CAPM.

Estimated 2009 Federal Reserve assets, reflected in table 3, have decreased $3,408.6 million, mainly due to a decline in items in process of collection of $3,175.3 million. This reduction largely stems from the continued reduction in paper check volumes and the accelerated collection of items processed in the Check 21 environment.[10]

In past years, the level of clearing balances reflected in table 3 has consisted of contracted clearing balances and the priced-services portion of excess balances held at Reserve Banks. As noted above, all excess balances are now considered reserve-related. Consequently, the clearing balances on the priced-services pro forma balance sheet for 2009 do not reflect excess clearing balances and only consist of contracted clearing balances held. The 2009 projected clearing balances continue to be based on July 2008 balance levels held at Reserve Banks.[11] In light of the uncertainty regarding the level of clearing balances in an interest-on-reserves environment, the Board approved basing the actual PSAF costs used in cost-recovery calculations on the actual levels of clearing balances held throughout 2009. To the extent that clearing balances fall below the current level of core clearing balances, debt would be imputed.

As shown in table 4, the portion of assets financed with clearing balances has increased. Short-term liabilities exceed short-term assets by $2.5 million; therefore, no clearing balances are used to fund short-term assets. This figure represents a $6.7 million decline from the short-term assets funded in 2008, a decrease that results largely from the reduction in estimated short-term receivables. The amount of core clearing balances used to fund long-term assets has increased $16.5 million primarily because of a lower amount of imputed equity, which also is used to fund long-term assets.

As previously mentioned, clearing balances are available as a funding source for priced-services assets. Table 4 shows that $82.5 million in clearing balances is used to fund priced-services assets in 2009. The interest rate sensitivity analysis in table 5 indicates that a 200 basis point decrease in interest rates affects the ratio of rate-sensitive assets to rate-sensitive liabilities and increases cost recovery by 1.6 percentage points, while an increase of 200 basis points in interest rates decreases cost recovery by 1.7 percentage points. The established threshold for a change in cost recovery is two percentage points; therefore, interest rate risk associated with using these balances is within acceptable levels and no long-term debt is imputed.

As shown in table 3, the amount of equity imputed for the 2009 PSAF is $458.4 million, a decrease of $170.5 million from the imputed equity for 2008. In accordance with FAS 158, this amount includes an accumulated other comprehensive loss of $322.6 million. Both the capital to total assets ratio and the capital to risk-weighted assets ratio meet or exceed the regulatory requirements for a well-capitalized DI. Equity is calculated as 5 percent of total assets, and the ratio of capital to risk-weighted assets is 10.0 percent.[12] The Reserve Banks imputed an FDIC assessment for the priced services based on the FDIC's 2009 assessment rates and the level of clearing balances held at Reserve Banks.[13] For 2009, the net FDIC assessment is imputed at $0.9 million, compared with a net FDIC assessment of $0.4 million in 2008.[14]

Table 6 shows the imputed PSAF elements, including the pretax ROE and other required PSAF costs, for 2008 and 2009. The $50.4 million decrease in ROE is caused by the combination of a lower amount of imputed equity and a decrease in the risk-free rate of return. Sales taxes decreased from $8.9 million in 2008 to $7.3 million in 2009. The effective income tax rate used in 2009 increased to 32.6 percent from 31.2 percent in 2008. The priced-services portion of the Board's expenses increased $0.6 million from $7.2 million in 2008 to $7.8 million in 2009.

3. *Revised PSAF Methodology for 2010*—In light of the implementation of the payment of interest on reserves, the Board is evaluating potential changes to the PSAF methodology, for implementation in 2010 and may request public comment on a proposed revised PSAF methodology later this year.

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[9] On October 3, 2008, section 128 of the Emergency Economic Stabilization Act of 2008 accelerated the Reserve Banks' authority to pay interest on required reserve and excess balances held by DIs. For further information regarding the Board's implementation of this authority and a description of these changes, see the interim final rule amending Regulation D (*http://www.federalreserve.gov/newsevents/press/monetary/20081006a.htm*).

See section C for more information on the earnings credit rate changes.

[10] In previous years, a historical average balance of items in process of collection was used as an estimate for the coming year's items in process of collection balance. Given the substantial declines in both paper check volumes and items in process of collection, the Reserve Banks have estimated 2009 items in process of collection using projected 2009 paper check volumes and the historical relationship between paper check volume and items in process of collection.

[11] To the extent that the interest rates on excess balances are higher than the earnings credit rate, clearing balances will likely decrease in the future as DIs shift balances from the clearing balance program to excess balances in pursuit of greater flexibility and higher returns. It is difficult to forecast the rapidity and degree of this shift because it depends on DI behavior and the disparity between the excess reserves rate and the earnings credit rate.

[12] In December 2006, bank regulators (the Board, the FDIC, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision) announced an interim ruling that excludes FAS 158-related accumulated other comprehensive income or losses from the calculation of regulatory capital. The Reserve Banks, however, elected to impute total equity at 5 percent of assets, as indicated above, until the regulators announce a final ruling.

[13] For information on the 2009 FDIC assessment rates, see *http://www.fdic.gov/news/news/press/2008/pr08094.html*.

[14] Per FDIC rules, any remaining portion of the one-time assessment credit can offset up to 90 percent of the assessment amount in subsequent years. For 2009, 90 percent of the total imputed assessment of $9.3 million was offset by the remaining assessment credit, resulting in a net assessment of $0.9 million. For 2008, the net FDIC assessment was $0.4 million.

Table 3
Comparison of Pro Forma Balance Sheets for Federal Reserve Priced Services
(millions of dollars – projected average for year)

	2009	2008	Change
Short-term assets			
Imputed reserve requirement on clearing balances	$ 797.9	$ 799.7	$ (1.8)
Receivables	53.6	64.3	(10.7)
Materials and supplies	1.9	2.0	(0.1)
Prepaid expenses	26.3	29.3	(3.0)
Items in process of collection[15]	236.4	3,411.7	(3,175.3)
Total short-term assets	1,116.1	4,307.0	(3,190.9)
Imputed investments	$ 7,099.0	$ 7,124.5	$ (25.5)
Long-term assets			
Premises[16]	$ 322.3	$ 393.9	$ (71.6)
Furniture and equipment	92.8	131.0	(38.2)
Leasehold improvements and long-term prepayments	83.0	86.7	(3.7)
Prepaid pension costs	303.3	384.2	(80.9)
Deferred tax asset	152.2	150.0	2.2
Total long-term assets	953.6	1,145.8	(192.2)
Total assets	$ 9,168.7	$ 12,577.3	$ (3,408.6)
Short-term liabilities[17]			
Clearing balances	$ 7,361.6	$ 7,683.9	$ (322.3)
Deferred credit items[15]	854.2	3,724.7	(2,870.5)
Short-term payables	84.3	91.4	(7.1)
Total short-term liabilities	8,300.1	11,500.0	(3,199.9)
Long-term liabilities[17]			
Postemployment/postretirement benefits liability	$ 410.2	$ 448.4	$ (38.2)
Total liabilities	$ 8,710.3	$ 11,948.4	$ (3,238.1)
Equity[18]	$ 458.4	$ 628.9	$ (170.5)
Total liabilities and equity	$ 9,168.7	$ 12,577.3	$ (3,408.6)

[15] Represents float that is directly estimated at the service level.

[16] Includes the allocation of Board assets to priced services of $1.1 million for 2009 and 2008.

[17] No debt is imputed because clearing balances are a funding source.

[18] Includes an accumulated other comprehensive loss of $328.4 million for 2008, which was reduced to $322.6 million for 2009 to reflect the ongoing amortization of the accumulated loss in accordance with FAS 158. Future gains or losses, and their effects on the pro forma balance sheet, cannot be projected.

Table 4
Portion of Clearing Balances Used to Fund Priced-Services Assets
(millions of dollars)

	2009		2008	
A. Short-term asset financing				
Short-term assets to be financed:				
Receivables	$ 53.6		$ 64.3	
Materials and supplies	1.9		2.0	
Prepaid expenses	26.3		29.3	
Total short-term assets to be financed	$ 81.8		$ 95.6	
Short-term funding sources:				
Short-term payables	$ 84.3		$ 91.4	
Portion of short-term assets with clearing balances[19]		$ (2.5)		$ 4.2
B. Long-term asset financing				
Long-term assets to be financed:				
Premises	$ 322.3		$ 393.9	
Furniture and equipment	92.8		131.0	
Leasehold improvements and long-term prepayments	83.0		86.7	
Prepaid pension costs	303.3		384.2	
Deferred tax asset	152.2		150.0	
Total long-term assets to be financed	$ 953.6		$ 1,145.8	
Long-term funding sources:				
Postemployment/postretirement benefits liability	$ 410.2		$ 448.4	
Imputed equity[20]	458.4		628.9	
Total long-term funding sources	$ 868.6		$ 1,077.3	
Portion of long-term assets funded with core clearing balances[19]		$ 85.0		$ 68.5
C. Total clearing balances used for funding priced-services assets		$ 82.5		$ 72.7

[19] Clearing balances shown in table 3 are available for financing priced-services assets. Using these balances reduces the amount available for investment in the NICB calculation. Long-term assets are financed with long-term liabilities, equity, and core clearing balances; a total of $4 billion in clearing balances is available for this purpose. Short-term assets are financed with short-term payables and clearing balances not used to finance long-term assets. No short- or long-term debt is imputed.

[20] See table 6 for calculation of required imputed equity amount.

Table 5
2009 Interest Rate Sensitivity Analysis[21]
(millions of dollars)

	Rate sensitive	Rate insensitive	Total
Assets			
Imputed reserve requirement on clearing balances		$ 797.9	$ 797.9
Imputed investments	$ 7,099.0		7,099.0
Receivables		53.6	53.6
Materials and supplies		1.9	1.9
Prepaid expenses		26.3	26.3
Items in process of collection[22]	(617.8)	854.2	236.4
Long-term assets		953.6	953.6
Total assets	$ 6,481.2	$ 2,687.5	$ 9,168.7
Liabilities			
Clearing balances	$ 7,361.6		$ 7,361.6
Deferred credit items		$ 854.2	854.2
Short-term payables		84.3	84.3
Long-term liabilities		410.2	410.2
Total liabilities	$ 7,361.6	$ 1,348.7	$ 8,710.3
Rate change results		**200 basis point decrease in rates**	**200 basis point increase in rates**
Asset yield ($6,481.2 x rate change)		$ (129.6)	$ 129.6
Liability cost ($7,361.6 x rate change)		(147.2)	147.2
Effect of 200 basis point change		$ 17.6	$ (17.6)
2009 budgeted revenue		$ 692.4	$ 692.4
Effect of change		17.6	(17.6)
Revenue adjusted for effect of interest rate change		$ 710.0	$ 674.8
2009 budgeted total expenses		$ 699.4	$ 699.4
2009 budgeted PSAF		39.6	39.6
Tax effect of interest rate change ($ change x 32.6%)		5.7	(5.7)
Total recovery amounts		$ 744.7	$ 733.3
Recovery rate before interest rate change		93.7%	93.7%
Recovery rate after interest rate change		95.3%	92.0%
Effect of interest rate change on cost recovery[23]		1.6%	(1.7)%

[21] The interest rate sensitivity analysis evaluates the level of interest rate risk presented by the difference between rate-sensitive assets and rate-sensitive liabilities. The analysis reviews the ratio of rate-sensitive assets to rate-sensitive liabilities and the effect on cost recovery of a change in interest rates of up to 200 basis points.

[22] The amount designated as rate-sensitive represents items collected prior to providing credit according to established availability schedules.

[23] The effect of a potential change in rates is less than a two percentage point change in cost recovery; therefore, no long-term debt is imputed for 2009.

Table 6

Derivation of the 2009 and 2008 PSAF
(millions of dollars)

		2009			2008	
A. Imputed elements						
Short-term debt[24]		$ 0.0			$ 0.0	
Long-term debt[25]		0.0			0.0	
Equity						
Total assets from table 3	$ 9,168.7			$ 12,577.3		
Required capital ratio[26]	5%			5%		
Total equity		$ 458.4			$ 628.9	
B. Cost of capital						
1. Financing rates/costs						
Short-term debt		N/A			N/A	
Long-term debt		N/A			N/A	
Pretax return on equity		10.1%			15.4%	
2. Elements of capital costs						
Short-term debt			$ 0.0			$ 0.0
Long-term debt			0.0			0.0
Equity[27]	$ 458.4	x 10.1% =	46.2	$ 628.9	x 15.4%	96.6
			$ 46.2			$ 96.6
C. Other required PSAF costs						
Sales taxes		$ 7.3			$ 8.9	
FDIC assessment		0.9			0.4	
Board expenses		7.8			7.2	
			16.0			16.5
D. Total PSAF			$ 62.2			$ 113.1
As a percent of assets			0.7%			0.9%
As a percent of expenses[28]			9.5%			14.9%
E. Tax rates			32.6%			31.2%

[24] No short-term debt is imputed because clearing balances are a funding source for those assets that are not financed with short-term payables.

[25] No long-term debt is imputed because core clearing balances are a funding source.

[26] Based on the regulatory requirements for a well-capitalized institution for the purpose of assessing insurance premiums.

[27] The 2009 ROE is equal to a risk-free rate plus a risk premium (beta * market risk premium). The 2009 after-tax CAPM ROE is calculated as 1.67% + (1 * 5.12%) = 6.79%. Using a tax rate of 32.6%, the after-tax ROE is converted into a pretax ROE, which results in a pretax ROE of (6.79% / (1-32.6%)) = 10.1%.

[28] System 2009 budgeted priced services expenses less shipping are $655.9 million.

Table 7
Computation of 2009 Capital Adequacy for Federal Reserve Priced Services
(millions of dollars)

	Assets	Risk Weight	Weighted Assets
Imputed reserve requirement on clearing balances	$ 797.9	0.0	$ 0.0
Imputed investments:			
3-month Treasury bills[29, 30]	$ 2,890.9	0.0	$ 0.0
1-year Treasury notes[29]	57.7	0.0	0.0
Commercial paper (1-month)[29]	3,392.8	1.0	3,392.8
GNMA mutual fund[31]	757.6	0.2	151.5
Total imputed investments	7,099.0		3,544.3
Receivables	$ 53.6	0.2	$ 10.7
Materials and supplies	1.9	1.0	1.9
Prepaid expenses	26.3	1.0	26.3
Items in process of collection	236.4	0.2	47.3
Premises	322.3	1.0	322.3
Furniture and equipment	92.8	1.0	92.8
Leasehold improvements and long-term prepayments	83.0	1.0	83.0
Prepaid pension costs	303.3	1.0	303.3
Deferred tax asset	152.2	1.0	152.2
Total	$ 9,168.7		$ 4,584.1
Imputed equity for 2009	$ 458.4		
Capital to risk-weighted assets	10.0 %		
Capital to total assets	5.0 %		

[29] The imputed investments are assumed to be similar to those for which rates are available on the Federal Reserve's H.15 statistical release, which can be located at http://www.federalreserve.gov/releases/h15/data.htm.

[30] Includes estimated amounts arising from the collection of items prior to providing credit according to established availability schedules. These amounts are assumed to be invested in a short-term Treasury security.

[31] The imputed mutual fund investment is based on Vanguard's GNMA Fund Investor Shares fund, which was chosen based on the investment strategies articulated in its prospectuses. The fund returns can be located at https://personal.vanguard.com/VGApp/hnw/FundsByType.

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C. *Earnings Credits on Clearing Balances*—The Reserve Banks will maintain the current rate of 80 percent of the three-month Treasury bill rate to calculate earnings credits on clearing balances.

Clearing balances were introduced in 1981, as part of the Board's implementation of the Monetary Control Act, to facilitate access to Federal Reserve priced services by institutions that did not have sufficient reserve balances to support the settlement of their payment transactions. The earnings credit calculation uses a percentage discount on a rolling thirteen-week average of the annualized coupon equivalent yield of three-month Treasury bills in the secondary market. Earnings credits, which are calculated monthly, can be used only to offset charges for priced services and expire if not used within one year.[15]

Effective October 9, 2008, in conjunction with the implementation of interest on reserves, the Board changed the method of computation for earnings credits and the recovery of float costs. These changes discontinued practices related to reserve requirements that are no longer necessary. Adjustments were previously made to ensure that respondents viewed balances at the Federal Reserve Banks and balances at a private-sector correspondent as equivalent. Therefore, the formula used by the Reserve Banks to calculate earnings credits on contracted clearing balances was revised.[16]

D. *Check Service*—Table 8 shows the 2007, 2008 estimated, and 2009 budgeted cost recovery performance for the commercial check service.

TABLE 8—CHECK SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)]
2007	812.0	743.3	68.6	63.2	100.7%
2008 (estimate)	665.6	632.6	33.0	51.9	97.2%
2009 (budget)	493.8	516.9	−23.1	22.4	91.5%

1. *2008 Estimate*—For 2008, the Reserve Banks estimate that the check service will recover 97.2 percent of total expenses, including imputed expenses, and targeted ROE, compared with the budgeted recovery rate of 100.5 percent (see table 8). Through August 2008, the check service has recovered 101.3 percent of total costs, including imputed expenses, and targeted ROE. For the full year, the Reserve Banks expect to recover all actual and imputed expenses of providing check services and earn a net income of $33.0 million, compared with a targeted ROE of $51.9 million.

The lower-than-budgeted cost recovery is the result of lower-than-expected NICB and higher-than-projected pension costs. For the year, NICB is expected to be nearly $30 million below budget. This shortfall, however, is expected to be partially offset by a $20 million increase in product revenue, reflecting additional revenue associated with the midyear price increase on all paper deposit products. Additionally, the check service's cost recovery shortfall will be affected by one-time costs associated with the next phase of the Reserve Banks' check restructuring initiative.

The number of checks deposited electronically has grown rapidly in 2008 (see table 9). In August, the proportion of checks deposited electronically with the Reserve Banks for collection was approximately 83 percent of total check deposits. By the end of 2008, the Reserve Banks expect Fed Forward deposit penetration rates to surpass 90 percent.

The number of checks presented electronically using Check 21 products has also grown steadily in 2008 (see table 9). In August, 57 percent of the Reserve Banks' volume was presented using Check 21 products. By the end of the year, the Reserve Banks expect that nearly 70 percent of all checks will be presented using Check 21 products. For the last several years, depository institutions had been slower to accept check presentments electronically because financial incentives were generally stronger for electronic check deposit and because integrating electronic presentments into back-office processing and risk-management systems was a complex and expensive undertaking. Given the significant increase in electronic deposits and presentments, it now appears that depository institutions have made substantial progress towards establishing an end-to-end electronic check-processing environment.

TABLE 9—CHECK 21 PRODUCT PENETRATION RATES [a]

[Percent] [b]

	2007	August 2008 year-to-date	August 2008 actual	December 2008 projection
Deposit—FedForward	42	70	83	93
Presentment	25	48	57	70
FedReceipt	4	6	8	10

[15] A band is established around the contracted clearing balance to determine the maximum balance on which credits are earned as well as any deficiency charges. The clearing balance allowance is 2 percent of the contracted amount or $25,000, whichever is greater. Earnings credits are based on the period-average balance maintained up to a maximum of the contracted amount plus the clearing balance allowance. Deficiency charges apply when the average balance falls below the contracted amount less the allowance, although credits are still earned on the average maintained balance.

[16] Effective October 9, 2008, the formula used by the Reserve Banks to calculate earnings credits has changed from

*e = [b * (1-FRR) * r] + [b * (MRR) * f]

to e = [b * r]

Where e is total earnings credits, b is the average clearing balance maintained, FRR is the assumed Reserve Bank marginal reserve ratio (10 percent), r is the earnings credit rate, MRR is the marginal reserve ratio of the DI holding the balance (either 0 percent, 3 percent, or 10 percent), and f is the average federal funds rate. A DI that meets its reserve requirement entirely with vault cash is assigned a marginal reserve requirement of zero.

TABLE 9—CHECK 21 PRODUCT PENETRATION RATES [a]—Continued

[Percent] [b]

	2007	August 2008 year-to-date	August 2008 actual	December 2008 projection
FedReceipt Plus	21	42	50	60
Return—FedReturn	23	35	42	66

[a] FedForward is the electronic forward check collection product; FedReturn is the electronic check return product; and FedReceipt is electronic presentment with accompanying images. Under FedReceipt, the Reserve Banks electronically present only the checks that were deposited electronically or that were deposited in paper form and converted into electronic form by the Reserve Banks to improve their efficiency. Under FedReceipt Plus, the Reserve Banks electronically present, at the request of the depository institution, all checks drawn on that depository institution.

[b] Deposit and presentment statistics are calculated as a percentage of total forward collection volume. Return statistics are calculated as a percentage of total return volume.

For full-year 2008, the Reserve Banks estimate that their total forward check collection volume will decline 5 percent.[17] Paper forward-collection volume is expected to decline 63 percent for the full year, compared with a budgeted decline of 42 percent (see table 10). This greater-than-expected decline in paper check volume is primarily the result of more checks being deposited electronically. For 2008, the Reserve Banks estimate that electronic check deposit volume will increase 75 percent. The Reserve Banks also estimate that paper return volume will decline at a faster pace than anticipated, 42 percent for the full year, compared with a budgeted decline of 34 percent, due to a 33 percent increase in electronic check return volume.

TABLE 10—PAPER CHECK PRODUCT VOLUME CHANGES

[Percent]

	Budgeted 2008 change	Estimated 2008 change
Forward collection	−42	−63
Returns	−34	−42

2. *2009 Pricing*—In 2009, the Reserve Banks project that the check service will recover 91.5 percent of total expenses and targeted ROE. Revenue is projected to be $493.8 million, or about a $172 million decline from 2008. This decline is driven largely by projected reductions in check deposits and an increasing proportion of checks being presented electronically, as well as a $33 million reduction in NICB. Total expenses for the check service are projected to be $516.9 million, a decline of about $116 million from 2008. A key driver in the reduction of check costs is the continued decline in the number of Reserve Bank check-processing sites and associated staff reductions. The Reserve Banks have recently announced plans to accelerate the consolidation of check processing offices in 2009 and are assessing further reductions in their check processing infrastructure.

For 2009, the Reserve Banks estimate that their total forward check volume will decline 12 percent. Volume from traditional paper check deposit services will decline 86 percent and represent less than 5 percent of the Reserve Banks' check deposits by year-end 2009. This volume decline will be partially offset by a projected 10 percent increase in FedForward volume as the shift from paper to electronic check collection continues. The Reserve Banks also estimate that total return volume will decline 10 percent, as a 55 percent reduction in paper check return volume is partially offset by a 24 percent increase in FedReturn volume. The Reserve Banks also project that combined FedReceipt and FedReceipt Plus volume will increase 57 percent in 2009 (see table 11).

TABLE 11—CHECK 21 VOLUME

	2009 Budgeted volume (millions of items)	Growth from 2008 estimate (percent)
FedForward	7,970	10
FedReceipt/ FedReceipt Plus	6,382	57
FedReturn	71	24

For 2009, the Reserve Banks will increase forward paper check collection fees 26 percent and paper return service fees 33 percent. These increases are designed to encourage the continued rapid adoption of Check 21 services and to reflect the higher costs associated with processing and transporting paper checks. For Check 21 services, the Reserve Banks will increase FedForward fees 3.8 percent for checks presented electronically and 37 percent for checks presented as substitute checks. FedReturn fees would increase 26 percent (see table 12). Because the fees to collect and return checks drawn on depository institutions that accept electronics are lower than on those that accept paper, the rapid rise in the number of depository institutions that are accepting presentments and returns electronically are expected to result in a 10 percent reduction in the effective price to collect a check electronically and an 8 percent reduction in the effective price to return a check electronically.

TABLE 12—2009 FEE CHANGES

[Percent]

Product	Fee change
Paper Check:	
Forward collection	26
Returns	33
Check 21[a]:	
FedForward (electronic endpoints)	3.8
FedForward (substitute check endpoints)	37
FedReturn	26

[a] FedReceipt customers receive a $0.004 discount per check presented electronically. This discount can be used to offset fees for checks deposited electronically with the Reserve Banks.

There are a number of risks to the Reserve Banks' ability to achieve the budgeted 2009 cost recovery. These risks include greater-than-expected check volume losses to correspondent banks, aggregators, and direct exchanges, which would result in lower-than-anticipated revenue. Also, a substantial decline in clearing balances due to the implementation of interest on reserves could adversely affect cost recovery. Other risks include higher-than-anticipated pension costs and significant cost overruns associated with unanticipated problems with check restructuring or the Reserve Banks' Check 21 platform.

[17] Total forward Reserve Bank check volumes are expected to drop from roughly 10.0 billion in 2007 to 9.4 billion in 2008.

E. *FedACH Service*—Table 13 shows the 2007, 2008 estimate, and 2009 budgeted cost-recovery performance for the commercial FedACH service.

TABLE 13—FEDACH SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)]
2007	102.0	85.9	16.0	8.8	107.6%
2008 (estimate)	96.6	87.8	8.8	7.6	101.3%
2009 (budget)	102.4	97.9	4.5	4.5	100.0%

1. *2008 Estimate*—The Reserve Banks estimate that the FedACH service will recover 101.3 percent of total expenses and targeted ROE, compared with the budgeted recovery rate of 102.0 percent, due mostly to lower-than-anticipated NICB. The Reserve Banks expect to recover all actual and imputed expenses of providing FedACH services and earn a net income of $8.8 million. Through August, FedACH average daily commercial origination volume was 8.5 percent higher than during the same period last year. For full-year 2008, the Reserve Banks estimate that FedACH commercial originations will grow 11.2 percent, compared with a budgeted full-year growth rate of 11.7 percent.

2. *2009 Pricing*—The Reserve Banks project that the FedACH service will recover 100.0 percent of total expenses and targeted ROE in 2009. Total revenue is budgeted to increase $5.8 million from the 2008 estimate, primarily due to the increases in monthly fixed fees and non-electronic information services, as well as new revenues from the implementation of value-added services. Total expenses are budgeted to increase $10.1 million from the 2008 estimate, generally due to costs associated with development of a new FedACH technology platform and increased pension costs.

The Reserve Banks expect FedACH commercial origination volume to grow 7.5 percent in 2009. While the growth rates for recurring ACH credits and debits have been relatively steady, the growth rates for payments that have accounted for the bulk of ACH growth in recent years (for example, electronic check conversion applications, including checks converted at lockboxes and at the point of sale, and consumer web-initiated entries) may start to decline. Additionally, the continued growth of direct exchanges and the competition from EPN will continue to affect FedACH volume growth.

To address these challenges, Reserve Banks will maintain FedACH transaction prices at current levels. At the same time, the Reserve Banks will increase monthly fees for account servicing, FedACH settlement, and information extract files. Fees for voice response returns and notifications of change and fees for non-electronic input/output, which includes paper, CD/DVD, and facsimile exception returns/notifications, will also rise.

Major risks to meeting the Reserve Banks' budgeted 2009 cost recovery are lower-than-anticipated volume growth due to competition from EPN, an increase in direct ACH exchanges, lower-than-expected NICB, and higher-than-expected pension expenses. In addition, unanticipated problems with technology upgrades may result in cost overruns.

F. *Fedwire Funds and National Settlement Services*—Table 14 shows the 2007, 2008 estimate, and 2009 budgeted cost recovery performance for the Fedwire Funds and National Settlement Services.

TABLE 14—FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)]
2007	74.5	63.1	11.4	6.3	107.3%
2008 (estimate)	67.4	61.6	5.8	5.3	100.8%
2009 (budget)	71.7	69.7	1.9	3.2	98.3%

1. *2008 Estimate*—The Reserve Banks estimate that the Fedwire Funds and National Settlement Services will recover 100.8 percent of total expenses and targeted ROE, compared with a 2008 budgeted recovery rate of 105.4 percent. The lower-than-expected recovery rate is primarily attributable to lower-than-expected NICB and transaction fee revenue. Through August, online Fedwire funds transfer volume was 2.0 percent lower than the same period last year. For full-year 2008, the Reserve Banks estimate that online Fedwire funds transfer volume will decline 1.2 percent, compared to a budgeted growth rate of 2.1 percent. With respect to the National Settlement Service, the Reserve Banks estimate that the volume of settlement entries processed during 2008 will decline 4.4 percent, due to three fewer settlement arrangements submitting settlement files.

2. *2009 Pricing*—The Reserve Banks expect the Fedwire Funds and National Settlement Services to recover 98.3 percent of total expenses and targeted ROE in 2009. The Reserve Banks project total revenue to increase $4.3 million compared with the 2008 estimate. The increase in revenue is due to the implementation of a monthly participation fee for the Fedwire Funds Service. Total expenses are budgeted to increase $8.1 million from the 2008 estimate due to higher pension costs, as well as increases in operating costs. Online volume for the Fedwire Funds Service for 2009 is budgeted to decline by 1.0 percent, consistent with 2008 volume trends. Online volume for the

National Settlement Service for 2009 is budgeted to be unchanged.

The Reserve Banks will implement a $60 per month participation fee, which will only be applied to Fedwire funds participants' routing numbers that have activity during the billing month. The monthly fee is intended to better align the revenue stream with the costs of providing the service, which are predominately fixed. The Reserve Banks will also increase the surcharge for offline Fedwire funds transfers. With respect to the National Settlement Service, the Reserve Banks will increase the basic settlement file fee, as well as the surcharge for an offline file origination.

G. *Fedwire Securities Service*—Table 15 shows the 2007, 2008 estimate, and 2009 budgeted cost recovery performance for the Fedwire Securities Service.[18]

TABLE 15—FEDWIRE SECURITIES SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)]
2007	23.9	21.0	2.9	2.0	103.7%
2008 (estimate)	23.4	21.2	2.2	1.7	102.1%
2009 (budget)	24.5	23.4	1.2	1.1	100.5%

1. *2008 Estimate*—The Reserve Banks estimate that the Fedwire Securities Service will recover 102.1 percent of total expenses and targeted ROE, compared with a 2008 budgeted recovery rate of 104.8 percent. The lower-than-budgeted recovery is primarily attributable to lower-than-expected NICB. Through August, online securities volume was 19.8 percent higher than during the same period last year. The higher-than-budgeted volume is driven by recent market volatility. For full-year 2008, the Reserve Banks estimate that online securities volume will grow 7.9 percent, although more recent data suggest that full-year volume growth may be somewhat higher.

2. *2009 Pricing*—The Reserve Banks project that the Fedwire Securities Service will recover 100.5 percent of total expenses and targeted ROE in 2009. The Reserve Banks project total revenue to increase by $1.1 million compared with the 2008 estimate. The increase in revenue is due to fee increases. Total expenses are budgeted to increase $2.2 million from the 2008 estimate due to higher pension costs as well as increases in operating costs. Online and offline securities volumes in 2009 are projected to be unchanged from 2008 estimates.

The Reserve Banks will increase the account maintenance fee by $5.00, the basic transfer fee by $0.01, and the claims adjustment fee by $0.30. The increase to the account maintenance fee is intended to better align the revenue stream with the costs of providing the service, which are predominately fixed.

H. *Electronic Access*—The Reserve Banks allocate the costs and revenues associated with electronic access to the Reserve Banks' priced services. There are currently three types of electronic access channels through which customers can access the Reserve Banks' priced services: FedLine®, FedPhone®, and FedMail®.[19] For 2009, the Reserve Banks will increase the fees on nearly all electronic access packages, as well as the other electronic access options, to address increases in costs.

The Reserve Banks offer nine electronic access packages that are supplemented by a number of premium (or à la carte) access and accounting information options. The first package provides access to information services through FedMail Email. The next two packages are FedLine Web packages, with three or five subscribers, that offer access to basic information and check services. The next two packages are FedLine Advantage packages, with three or five subscribers, that expand upon the FedLine Web packages and offer access to FedACH and Fedwire Services. The next package is FedLine Command, which offers an unattended connection to FedACH, Fedwire Securities statement services, and most accounting information services. The last three packages are FedLine Direct packages, which allow for unattended connections with three different connection speeds to FedACH, Fedwire Funds and Securities transactional and information services, and most accounting information services.

II. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy, ''The Federal Reserve in the Payments System.''[20] Under this policy, the Board assesses whether the changes would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position deriving from such legal differences. If the changes create such an effect, the Board must further evaluate the changes to assess whether the associated benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be achieved while minimizing the adverse effect on competition.

The Board believes that the 2009 fees will result in a projected net income below the targeted ROE primarily due to shortfalls in the check service. Given the ongoing major structural transition in the nation's check clearing system, it is likely that other market participants are also not achieving an ROE equivalent to that targeted by the Reserve Banks. Therefore, while it is possible, it is not likely that the Reserve Banks' failure to

[18] The Reserve Banks provide transfer services for securities issued by the U.S. Treasury, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the U.S. Treasury assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the funds settlement component of a Treasury securities transfer; this component is not treated as a priced service.

[19] FedPhone, FedMail, and FedLine are registered service marks of the Reserve Banks. These connections may also be used to access non-priced services provided by the Reserve Banks. FedPhone is a free access option.

[20] Federal Reserve Regulatory Service (FRRS) 9–1558.

achieve the targeted ROE would adversely affect the ability of other service providers to compete with the Reserve Banks. In addition, any potential adverse effect on competing service providers would not be the result of differing legal powers or a dominant market position deriving from such legal differences.

The Reserve Banks have taken steps to maximize their 2009 cost recovery. Specifically, they increased fees for paper check and Check 21 services. The Reserve Banks believe that more significant increases to the fees for Check 21 services will slow the transition to a full electronic check processing environment nationwide and, at the same time, result in lower check net revenue due to volume losses. Given the fee increases and the check market environment, the Board believes that additional fee increases may hinder the achievement of the Reserve Banks' objective of improving the efficiency of the nation's check-collection system and may not materially improve cost recovery.

BILLING CODE 6210–01–P

FEDACH SERVICE 2009 FEE SCHEDULE

EFFECTIVE JANUARY 2, 2009. BOLD INDICATES CHANGES FROM 2008 PRICES.

	Fee
Origination (per item or record):[38]	
Items in small files	$0.0030
Items in large files	$0.0025
Addenda record	$0.0010
Receipt (per item or record):[39]	
Item	$0.0025
Addenda record	$0.0010
Risk Product:	
Risk origination monitoring criteria	
Tier 1 (1-20 sets)	$8.00/set of criteria/month
Tier 2 (21-150 sets)	$4.00/set of criteria/month
Tier 3 (151 and above)	$1.00/set of criteria/month
Risk origination monitoring batch	$0.0025/batch
FedEDI Plus:	
Defined report generated	$0.20
On demand report generated	$0.75
Secure delivery via e-mail	$0.20
Monthly fee (per routing number):	
Account servicing fee[40]	**$37.00**
FedACH settlement[41]	**$37.00**
Information extract file	**$35.00**
FedLine Web origination returns and notification of change (NOC) fee:[42]	$0.30
Voice response returns/NOC fee:[43]	**$3.00**
Non-electronic input/output fee:[44]	
CD or DVD input/output	**$50.00**
Paper input/output	**$50.00**
Facsimile exception returns/NOC[45]	**$30.00**

[38] Small files contain fewer than 2,500 items and large files contain 2,500 or more items. These origination fees do not apply to items that the Reserve Banks receive from the private-sector ACH operator.

[39] Receipt fees do not apply to items that the Reserve Banks send to the private-sector ACH operator.

[40] The account servicing fee applies to routing numbers that have received or originated FedACH transactions. Institutions that receive only U.S. government transactions or that elect to use the other operator exclusively are not assessed the account servicing fee.

[41] The FedACH settlement fee is applied to any routing number with activity during a month. This fee does not apply to routing numbers that use the Reserve Banks for government transactions only.

[42] The fee includes the transaction and addenda fees.

[43] The fee includes the transaction fee in addition to the voice response fee.

[44] These services are offered for contingency situations only.

[45] The fee includes the transaction fee in addition to the conversion fee.

Canadian cross-border fee:	
Cross-border item surcharge[46]	$0.039
Return received from Canada[47]	$0.77
Same-day recall of item at receiving gateway operator	$4.00
Same-day recall of item not at receiving gateway operator	$7.00
Trace of item at receiving gateway	$3.50
Trace of item not at receiving gateway	$5.00
Mexico service fee:	
Cross-border item surcharge[46]	$0.67
Return received from Mexico[47]	$0.69
Item trace	$11.50
Transatlantic service fee:	
Cross-border item surcharge[46]	
Austria	$2.00
Germany	$2.00
The Netherlands	$2.00
Switzerland	$2.00
United Kingdom	$2.00
Return received[47]	
Austria	$5.00
Germany	$8.00
The Netherlands	$5.00
Switzerland	$5.00
United Kingdom	$8.00

[46] This per-item surcharge is in addition to the standard domestic origination and input file processing fees.

[47] This per-item surcharge is in addition to the standard domestic receipt fees.

FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES 2009 FEE SCHEDULE

EFFECTIVE JANUARY 2, 2009. BOLD INDICATES CHANGES FROM 2008 FEE SCHEDULE.

Fedwire Funds Service

	Fee
Monthly participation fee[48]	**$60.00**
Basic volume-based transfer fee (originations and receipts)	
Per transfer for the first 3,000 transfers per month	$0.26
Per transfer for additional transfers up to 90,000 per month	$0.17
Per transfer for every transfer over 90,000 per month	$0.08
Surcharge for offline transfers (originations and receipts)	**$40.00**

National Settlement Service

Basic	
Settlement entry fee	$0.80
Settlement file fee	**$18.00**
Surcharge for offline file origination	**$40.00**
Minimum monthly charge (account maintenance)[49]	$60.00
Special settlement arrangements[50]	
Fee per day	$100.00

[48] The monthly participation fee will only be applied to Fedwire funds participants' routing numbers that have activity during the billing month.

[49] This minimum monthly charge will only be assessed if total settlement charges during a calendar month are less than $60.

[50] Special settlement arrangements use Fedwire funds transfers to effect settlement. Participants in arrangements and settlement agents are also charged the applicable Fedwire funds transfer fee for each transfer into and out of the settlement account.

FEDWIRE SECURITIES SERVICE 2009 FEE SCHEDULE (NON-TREASURY SECURITIES)

EFFECTIVE JANUARY 2, 2009. BOLD INDICATES CHANGES FROM 2008 FEE SCHEDULE.

	Fee
Basic transfer fee	
Transfer or reversal, originated or received	**$0.35**
Surcharge	
Offline transfer or reversal, originated or received	$60.00
Monthly maintenance fees	
Account maintenance (per account)	**$21.00**
Issues maintained (per issue/per account)	$0.40
Claim adjustment fee	**$0.60**
Joint custody fee	$40.00

Electronic Access 2009 Fee Schedule

EFFECTIVE JANUARY 2, 2009. BOLD INDICATES CHANGES FROM 2008 FEE SCHEDULE.

Electronic Access Packages (monthly)

FedMail Email **$20.00**

FedLine Web W3 **$95.00**

Includes: FedMail Email
FedLine Web with three individual subscriptions
Service Charge Information
Account Management Information
FedACH Risk Monitoring Service
FedEDI Service

FedLine Web W5 **$140.00**

Includes: FedMail Email
FedLine Web with five individual subscriptions
Service Charge Information
Account Management Information
FedACH Risk Monitoring Service
FedEDI Service
Cash Management System Basic - Own report only

FedLine Advantage A3 $310.00

Includes: FedLine Web W3 package
FedLine Advantage with three individual subscriptions
Virtual Private Network maintenance

FedLine Advantage A5 **$380.00**

Includes: FedLine Web W5 package
FedLine Advantage with five individual subscriptions
Virtual Private Network maintenance for one device
Intraday search download feature within Account Management Information

FedLine Command **$680.00**

Includes: FedLine Advantage A5 package
Virtual Private Network maintenance for one device
Billing Data Format File
Intra-Day File
End of Day Reconcilement File
Statement of Account Spreadsheet File (SASF)

FedLine Direct D56, D256, DT1	**D56 $2,500.00, D256 $3,500.00, and DT1 $4,500.00**

Includes: FedLine Command package
One dedicated unattended connection for FedLine Direct

Premium Options (monthly)[51]

Electronic Access

FedMail Fax (monthly per routing number)	**$30.00**
Additional subscribers package (each package contains 5 additional subscribers)	**$80.00**
Maintenance of additional Virtual Private Network	**$60.00**
Additional dedicated connections[52]	
56K	**$1,500.00**
256K	**$2,200.00**
T1	**$2,700.00**
FedImage/Check 21 Large File Delivery	Various

Accounting Information Services

Cash Management System	
Basic – Respondent and/or sub account reports (per report/month)	**$10.00**
Basic – Respondent/sub account recap report (per month)	**$40.00**
Plus – Own report up to six times a day (per month)	**$55.00**
Plus – Less than 10 respondent and/or sub accounts and SASF (per month)	**$105.00**
Plus – 10 or more respondent and/or sub accounts and SASF (per month)	**$225.00**
End of Day Reconcilement File (per month)	$100.00
Statement of Account Spreadsheet File (per month)	$100.00
Intra-Day File (per month)	$100.00

[51] Premium options for FedLine Web W3 and FedLine Advantage A3 are limited to FedMail Fax.

[52] Network diversity supplemental charge of $1,200 a month may apply in addition to these fees.

BILLING CODE 6210–01–C

By order of the Board of Governor of the Federal Reserve System, October 28, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–26101 Filed 10–31–08; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1555–N]

RIN 0938–AP20

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2009

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health services, effective on January 1, 2009.

DATES: *Effective Date:* This notice is effective on January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Randy Throndset, (410) 786–0131.

I. Background

A. Requirements of the Balanced Budget Act of 1997 for Establishing the Prospective Payment System for Home Health Services

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) enacted on August 5, 1997, significantly changed the way Medicare pays for Medicare home health services. Section 4603 of the BBA mandated the development of the home health prospective payment system (HH PPS). Until the implementation of a HH PPS on October 1, 2000, home health agencies (HHAs) received payment under a cost-based reimbursement system.

Section 4603(a) of the BBA mandated the development of a HH PPS for all Medicare-covered home health services provided under a plan of care that were paid on a reasonable cost basis by adding section 1895 of the Social Security Act (the Act), entitled ''Prospective Payment For Home Health Services''. Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of home health services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires that (1) the computation of a standard prospective payment amount include all costs for home health services covered and paid for on a reasonable cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the home health applicable increase percentage as specified in the statute.

Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels.

Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix change adjustment factor that adjusts for significant variation in costs among different units of services.

Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to home health services furnished in a geographic area compared to the applicable national average level. These wage-adjustment factors may be used by the Secretary for the different geographic wage levels for purposes of section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to make additions or adjustments to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Total outlier payments in a given fiscal year (FY) may not exceed 5 percent of total payments projected or estimated.

In accordance with the statute, we published a final rule (65 FR 41128) in the **Federal Register** on July 3, 2000 to implement the HH PPS legislation. The July 2000 final rule established requirements for the new HH PPS for home health services as required by section 4603 of the BBA, as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999, (Pub. L. 105–277), enacted on October 21, 1998; and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999, (Pub. L. 106–113), enacted on November 29, 1999. The requirements include the implementation of a HH PPS for home health services, consolidated billing requirements, and a number of other related changes. The HH PPS described in that rule replaced the retrospective reasonable cost-based system that was used by Medicare for the payment of home health services under Part A and Part B.

For a complete and full description of the HH PPS as required by the BBA, see the July 2000 HH PPS final rule (65 FR 41128 through 41214).

B. Deficit Reduction Act of 2005

On February 8, 2006, the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) was enacted. This legislation affected updates to HH payment rates for calendar year (CY) 2006. The DRA also required HHAs to submit home health care quality data and created a linkage between those data and payment, beginning in CY 2007.

Specifically, section 5201 of the DRA changed the CY 2006 update from the applicable home health market basket percentage increase minus 0.8 percentage points to a 0 percent update. In addition, section 5201 of the DRA amends section 421(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003). The amended section 421(a) of the MMA requires that for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) on or after January 1, 2006 and before January 1, 2007, that the Secretary increase the payment amount otherwise made under section 1895 of the Act for home health services by 5 percent. The statute waives budget neutrality for purposes of this increase since it specifically states that the Secretary must not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to home health services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

The 0 percent update to the payment rates and the rural add-on provisions of the DRA were implemented through a CMS transmittal (Pub. 100–20, One Time Notification, Transmittal 211) issued on February 10, 2006.

In addition, section 5201 of the DRA requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to payment. This requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the home health market basket percentage increase will be reduced 2 percentage points. In accordance with the statute,

we published a final rule (71 FR 65884, 65935) in the **Federal Register** on November 9, 2006 to implement the pay-for-reporting requirement of the DRA, codified at 42 CFR 484.225(h) and (i). In addition, the November 2006 final rule ended the 1-year transition period that consisted of a blend of 50 percent of the new area labor market designations' wage index and 50 percent of the previous area labor market designations' wage index. We also revised the fixed dollar loss ratio, which is used in the calculation of outlier payments.

C. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment rate that is adjusted for the applicable case-mix and wage index. The national standardized 60-day episode payment rate includes the six home health disciplines (skilled nursing, home health aide, physical therapy, speech-language pathology, occupational therapy, and medical social services) and non-routine medical supplies. Durable medical equipment covered under home health is paid for outside the HH PPS payment. To adjust for case-mix, the HH PPS uses a 153-category case-mix classification to assign patients to a home health resource group (HHRG). Clinical needs, functional status, and service utilization are computed from responses to selected data elements in the OASIS assessment instrument.

For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit amount by discipline; an episode consisting of four or fewer visits within a 60-day period is referred to as a LUPA. Medicare also adjusts the national standardized 60-day episode payment rate for certain intervening events that are subject to a partial episode payment adjustment (PEP adjustment). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

D. Updates to the HH PPS

As required by section 1895(b)(3)(B) of the Act, we have historically updated the HH PPS rates annually in a separate **Federal Register** document. We published a final rule with comment period in the **Federal Register** on August 29, 2007 (72 FR 49762) that set forth a refinement and rate update to the Medicare prospective payment system for home health services. As part of the CY 2008 HH PPS final rule with comment period, we rebased and revised the home health market basket to reflect FY 2003 Medicare cost report data, the latest available and most complete data on the structure of HHA costs. In the rebased and revised home health market basket, the labor-related share was 77.082 (an increase from the previous labor-related share of 76.775). The non-labor-related share is 22.918 (a decrease from the previous nonlabor-related share of 23.225). The increase in the labor-related share using the FY 2003 home health market basket was primarily due to the increase in the benefit cost weight.

The CY 2008 HH PPS final rule with comment period also implemented refinements to the payment system. Extensive research was conducted to investigate ways to improve the performance of the case-mix model. This research was the basis for our decision to refine the case-mix model. We refined the case-mix model to reflect different resource costs for early home health episodes versus later home health episodes and to expand the case-mix variables included in the payment model. For 2008, we used a 4-equation case-mix model that recognizes and differentiates payment for episodes of care based on whether a patient is in an early (1st or 2nd episode in a sequence of adjacent episodes) or later (the 3rd episode and beyond in a sequence of adjacent episodes) episode of care as well as recognizing whether a patient was a high therapy (14 or more therapy visits) or low therapy (13 or fewer therapy visits) case. We defined episodes as adjacent if they were separated by no more than a 60-day period between claims. Analysis of the performance of the case-mix model for later episodes revealed two important differences for episodes occurring later in the home health treatment compared to earlier episodes: Higher resource use per episode and a different relationship between clinical conditions and resource use. We use additional variables to include scores for certain wound and skin conditions; more diagnosis groups such as pulmonary, cardiac, and cancer diagnoses; and certain secondary diagnoses. The 4-equation model results in 153 case-mix groups.

In addition, we replaced the previous single therapy threshold of 10 visits with three therapy thresholds at 6, 14, and 20 visits. The payment for additional therapy visits between the three thresholds increases gradually, incorporating a declining, rather than a constant, amount per added therapy visit. This approach does not reduce total payments to home health providers because the payment model still predicts total resource cost. The combined effect of the new therapy thresholds and payment gradations reduces the undesirable emphasis in treatment planning on a single therapy visit threshold and restores the primacy of clinical considerations in treatment planning for rehabilitation patients.

In the CY 2008 HH PPS final rule with comment period, we further adjusted for case-mix that was not due to a change in the underlying health status of the home health users. Section 1895(b)(3)(B) of the Act requires that in compensating for case-mix change, a payment reduction must be applied to the standardized payment amount. For the CY 2008 HH PPS final rule with comment period, we conducted several analyses to determine if any portion of the total change in case-mix could be considered to be real change. Real change is a change in the underlying health status of the home health user population. The results of the analysis indicated that while a small amount (8.03 percent) of measured case-mix change was real, most of the change was unrelated to the underlying health status of home health users.

Using 100 percent of the home health interim payment system (HH IPS) file for our baseline (12 months ending September 30, 2000), the average case-mix weight per episode was 1.0960. (The HH IPS was the previous cost-based payment system under which HHAs were paid, prior to the HH PPS.) The 2005 20 percent sample file yielded an average CMI (case mix indicator) of 1.2361. Therefore, the change measurement was $(1.2361 - 1.0960)/1.0960 = 12.78$ percent. We adjusted this result downward by 8.03 percent (the percentage of total change in case-mix considered to be real) to get a final case-mix change measure of 11.75 percent $(0.1278 * (1 - 0.0803) = 0.1175)$. To account for the 11.75 percent increase in case-mix which was not due to a change in the underlying health status of Medicare home health patients, we implemented a 2.75 percent reduction of the national standardized 60-day episode payment rate for 3 years beginning in 2008 and solicited comments on extending that adjustment period to a fourth year based on a 2.71 percent reduction for 2011 (see 72 FR 49833).

Additionally, we modified a number of existing HH PPS payment adjustments. Specifically, we increased the payment for low utilization payment adjustment (LUPA) episodes that occur as the only episode or the initial episode during a sequence of adjacent episodes, by $87.93. We also eliminated the significant change in condition (SCIC)

payment adjustment for various reasons. Specifically, we ended the policy because of the apparent difficulty HHAs had in interpreting the SCIC policy, the association between negative margins and SCIC episodes, the decline in the occurrence of SCICs, and the estimated minimal impact on outlays from eliminating the SCIC policy.

In the development of the HH PPS, non-routine medical supplies (NRS) were accounted for by attributing $49.62 to the standardized episode payment. In the CY 2008 HH PPS final rule with comment period, we applied a severity adjustment to the NRS portion of the HH PPS standardized episode payment. Specifically, we adopted a six-severity-group approach to account for NRS costs (see 72 FR 49851–49852) based on measurable conditions that are feasible to administer. This change offers HHAs some protection against episodes with extremely high NRS costs. Finally, we did not modify the existing Partial Episode Payment (PEP) Adjustment.

Section 1895(b)(5) of the Act also allows for the provision of an addition or adjustment to account for outlier episodes, which are those episodes that incur unusually large costs due to heavy patient care needs. Under the HH PPS, outlier payments are made for episodes for which the estimated cost exceeds a threshold amount. The wage adjusted fixed dollar loss (FDL) amount represents the amount of loss that an agency must bear before an episode becomes eligible for outlier payments. Section 1895(b)(5) of the Act requires that the estimated total outlier payments may not exceed 5 percent of total estimated HH PPS payments. In the CY 2008 HH PPS final rule with comment period, we adjusted the FDL ratio to 0.89, based on the most recently available data, analysis, trends, and unknown effects of the refinements on outliers (see 72 FR 49857).

Finally, we expanded the list of quality measures identified in the update notice for CY 2007. In CY 2007, we specified 10 OASIS quality measures from the OASIS data set as appropriate for public reporting of measurements of health care quality. For CY 2008, we added two more quality measures from the OASIS data set for public reporting. All twelve publicly reported measures are National Quality Forum (NQF)-endorsed measures. The additional measures for 2008 were as follows:

- Emergent Care for Wound Infection, Deteriorating Wound Status; and
- Improvement in the Status of Surgical Wounds (see 72 FR 49861).

Accordingly, for CY 2008, we considered the existing OASIS data set submitted by HHAs to CMS for episodes beginning on or after July 1, 2006, and before July 1, 2007, as meeting the reporting requirement for quality measures for CY 2008.

II. Comments Received From CY 2008 HH PPS Final Rule With Comment Period

In the CY 2008 HH PPS final rule with comment period, we implemented a 2.75 percent payment reduction of the national standardized 60-day episode payment rate for three years beginning in CY 2008 and a fourth year reduction of 2.71 percent for CY 2011. We sought comments only on the 2.71 percent case-mix change adjustment for 2011. We received approximately 44 items of correspondence from the public, only a few of which were directly related to the 2.71 percent adjustment to the HH PPS 60-day episode payment rate in the fourth year. The provision for the 2.71 percent adjustment was added as the fourth year's reduction to the rates to account for the additional change in case-mix, that was indicated in the analysis for the CY 2008 final rule with comment period, that is not considered real; i.e., that is not related to an underlying change in patient health status. Comments originated from trade associations, HHAs, hospitals, and health care professionals such as physicians, nurses, social workers, and physical and occupational therapists. Because this is an update notice, we are not changing policy. However, in order to provide more meaningful and substantive responses we will respond to the above mentioned comments in future rulemaking. This approach allows us to respond comprehensively as more current data become available, while also affording the public ample opportunity to comment on possible future policy changes.

At this time, CMS is maintaining our existing policy as implemented in the CY 2008 final rule with comment period and will impose a 2.75 percent reduction to the national standardized 60-day episode rate for CY 2009. We will continue to monitor any changes in case-mix and may revise the percentage reductions to the HH PPS rates in future rulemaking.

III. Provisions of This Notice

A. National Standardized 60-Day Episode Rate

The Medicare HH PPS has been in effect since October 1, 2000. As set forth in the final rule published July 3, 2000 in the **Federal Register** (65 FR 41128), the unit of payment under the Medicare HH PPS is a national standardized 60-day episode rate. As set forth in § 484.220, we adjust the national standardized 60-day episode rate by a case-mix relative weight and a wage index value based on the site of service for the beneficiary. In the CY 2008 HH PPS final rule with comment period, we refined the case-mix methodology and also rebased and revised the home health market basket. The labor-related share of the case-mix adjusted 60-day episode rate is 77.082 percent and the non-labor-related share is 22.918 percent. The CY 2009 HH PPS rates use the same case-mix methodology and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the CY 2008 HH PPS final rule with comment period. We multiply the national 60-day episode rate by the patient's applicable case-mix weight. We divide the case-mix adjusted amount into a labor and non-labor portion. We multiply the labor portion by the applicable wage index based on the site of service of the beneficiary. We add the wage-adjusted portion to the non-labor portion yielding the case-mix and wage-adjusted 60-day episode rate subject to any additional applicable adjustments.

In accordance with section 1895(b)(3)(B) of the Act, we have updated the HH PPS rates annually in a separate **Federal Register** document. The HH PPS regulations at § 484.225 sets forth the specific annual percentage update. To reflect section 1895(b)(3)(B)(v) of the Act, as added by section 5201 of the DRA, we added § 484.225, paragraphs (h) and (i), in the November 9, 2006 final rule to reflect the requirement for submission of quality data, as follows:

(h) For 2007 and subsequent calendar years, in the case of a home health agency that submits home health quality data, as specified by the Secretary, the unadjusted national prospective 60-day episode rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount.

(i) For 2007 and subsequent calendar years, in the case of a home health agency that does not submit home health quality data, as specified by the Secretary, the unadjusted national prospective 60-day episode rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount minus 2 percentage points. Any reduction of the percentage change will apply only to the calendar year involved and will not be taken into account in computing the prospective payment amount for a subsequent calendar year.

For CY 2009, we will base the wage index adjustment to the labor portion of

the HH PPS rates on the most recent pre-floor and pre-reclassified hospital wage index. As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a ''low utilization payment adjustment'' (LUPA). We update the national per-visit amounts by discipline annually by the applicable home health market basket percentage. We adjust the national per-visit amount by the appropriate wage index based on the site of service for the beneficiary, as set forth in § 484.230. We will adjust the labor portion of the updated national per-visit amounts by discipline used to calculate the LUPA by the most recent pre-floor and pre-reclassified hospital wage index, as discussed in the CY 2008 HH PPS final rule with comment period. We are also updating the amounts of the LUPA add-on and the NRS conversion factor by the applicable home health market basket update of 2.9 percent for CY 2009.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and § 484.205(b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment (RAP) and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines which calendar year rates Medicare would use to pay the claim.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low utilization payment provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A partial episode payment adjustment as set forth in § 484.205(d) and § 484.235.
- An outlier payment as set forth in § 484.205(e) and § 484.240.

B. CY 2009 Update to the Home Health Market Basket Index

Section 1895(b)(3)(B) of the Act, as amended by section 5201 of the DRA, requires for CY 2009 that the standard prospective payment amounts be increased by a factor equal to the applicable home health market basket update for those HHAs that submit quality data as required by the Secretary.

The applicable home health market basket update will be reduced by 2 percentage points for those HHAs that fail to submit the required quality data. This requirement has been codified in regulations at 42 CFR 484.225. The HH PPS market basket update for CY 2009 is 2.9 percent. This is based on Global Insights Inc.'s, third quarter 2008 forecast, utilizing historical data through the second quarter of 2008. A detailed description of how we derived the HHA market basket is available in the CY 2008 Home Health PPS proposed rule (72 FR 25356, 25435).

- CY 2009 Adjustments

In order to calculate the CY 2009 national standardized 60-day episode rate, we first increase the CY 2008 national standardized 60-day episode payment rate of $2,270.32 by the home health market basket update of 2.9% for CY 2009.

Given this updated rate, we then take a reduction of 2.75 percent to account for the change in case-mix that is not related to the real change in patient acuity levels, as discussed above. The resulting updated CY 2009 national standardized 60-day episode rate for an HHA that submits the required quality data is shown in Table 1. The updated CY 2009 national standardized 60-day episode rate for an HHA that does not submit the required quality data is shown in Table 2.

TABLE 1—NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE HOME HEALTH MARKET BASKET UPDATE FOR CY 2009, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Total CY 2008 National Standardized 60-Day Episode Payment Rate	Multiply by the Home Health Market Basket Update (2.9 Percent) [1]	Updated National Standardized 60-Day Episode Payment	Reduce by 2.75 Percent for Nominal Change in Case-Mix	CY 2009 National Standardized 60-Day Episode Payment
$2,270.32	× 1.029	$2,336.16	× 0.9725	$2,271.92

[1] The estimated home health market basket update of 2.9 percent for CY 2009 is based on Global Insight Inc., 3rd Qtr 2008 forecast with historical data through 2nd Qtr 2008.

TABLE 2—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA—NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE HOME HEALTH MARKET BASKET UPDATE FOR CY 2009, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Total CY 2008 National Standardized 60-Day Episode Payment Rate	Multiply by the Home Health Market Basket Update (2.9 Percent) [1] minus 2 percent	Updated National Standardized 60-Day Episode Payment for HHAs that do not submit required quality data	Reduce by 2.75 Percent for Nominal Change in Case-Mix	CY 2009 National Standardized 60-Day Episode Payment for HHAs that do not submit required quality data
$2,270.32	× 1.009	$2,290.75	× 0.9725	$2,227.75

[1] The estimated home health market basket update of 2.9 percent for CY 2009 is based on Global Insight Inc., 3rd Qtr 2008 forecast with historical data through 2nd Qtr 2008.

• National Per-Visit Amounts Used To Pay LUPAs and Compute Imputed Costs Used in Outlier Calculations

As discussed previously in the CY 2008 HH PPS final rule with comment period, the policies governing LUPAs and the outlier calculations set forth in the July 3, 2000 HH PPS final rule will continue (65 FR 41128). Also, we implemented a LUPA add-on amount of $87.93 for initial and only episode LUPAs during CY 2008. In calculating the CY 2009 national per-visit amounts used to calculate payments for LUPA episodes and to compute the imputed costs in outlier calculations, we start with the CY 2008 per-visit amounts. We increase the CY 2008 per-visit amounts for each home health discipline for CY 2009 by the home health market basket update (2.9 percent). LUPA rates are not reduced due to the nominal increase in case-mix since they are per-visit rates and hence are not subject to changes in case-mix.

TABLE 3—NATIONAL PER-VISIT AMOUNTS FOR LUPAS (NOT INCLUDING THE INCREASE IN PAYMENT FOR A BENEFICIARY'S ONLY EPISODE OR THE INITIAL EPISODE IN A SEQUENCE OF ADJACENT EPISODES) AND OUTLIER CALCULATIONS UPDATED BY THE HOME HEALTH MARKET BASKET UPDATE FOR CY 2009, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Home Health Discipline	CY 2008 per-visit payment	For HHAs that DO submit the required quality data		For HHAs that DO NOT submit the required quality data	
		Multiply by the Home Health Market Basket Update (2.9 Percent) [1]	CY 2009 per-visit payment	Multiply by the Home Health Market Basket Update (2.9 percent) [1] minus 2 percent	CY 2009 per-visit payment
Home Health Aide	$47.51	× 1.029	$48.89	× 1.009	$47.94
Medical Social Services	168.17	× 1.029	173.05	× 1.009	169.68
Occupational Therapy	115.48	× 1.029	118.83	× 1.009	116.52
Physical Therapy	114.71	× 1.029	118.04	× 1.009	115.74
Skilled Nursing	104.91	× 1.029	107.95	× 1.009	105.85
Speech-Language Pathology	124.65	× 1.029	128.26	× 1.009	125.77

[1] The estimated home health market basket update of 2.9 percent for CY 2009 is based on Global Insight Inc., 3rd Qtr 2008 forecast with historical data through 2nd Qtr 2008.

Payment for LUPA episodes changed in CY 2008 in that for LUPAs that occur as initial episodes in a sequence of adjacent episodes or as the only episode, an additional payment amount is added to the LUPA payment. The Table 3 per-visit rates noted above are before that additional payment is added to the LUPA payment, and are the per-visit rates paid to all other LUPA episodes and used in computing outlier payments. LUPA episodes that occur as the only episode or initial episode in a sequence of adjacent episodes are adjusted by adding an additional amount to the LUPA payment before adjusting for wage index. For CY 2008, that amount was $87.93. This additional LUPA amount is updated in the same manner as the national standardized 60-day episode payment amount and the per-visit rates (i.e. by the home health market basket percentage update). Consequently, for CY 2009, the additional amount paid to LUPAs that occur as initial episodes in a sequence of adjacent episodes or as the only episode is 90.48 ($87.93 × 1.029).

Beginning in CY 2008, to ensure that the variation in non-routine medical supplies (NRS) is more appropriately reflected in the HH PPS, we replaced the original portion ($49.62) of the HH PPS base rate that accounted for NRS, with a system that pays for NRS based on 6 severity groups. For a complete description of the analysis and research behind the development of this system for the payment of NRS, we refer readers to the CY 2008 HH PPS proposed rule (72 FR 25426–25434). Following public comment on the initial proposal made in the proposed rule, we made several modifications using a file of more recent data. The revisions resulted in some scoring changes, and the addition of the sixth severity group to the original five severity groups, to provide more adequate reimbursement for episodes with a high utilization of NRS. As we did in the CY 2008 HH PPS final rule with comment, payments for NRS are updated by the home health market basket and reduced by the 2.75 percent reduction to the rates through the updating of the NRS conversion factor. NRS payments are computed by multiplying the relative weight for a particular severity level by the NRS conversion factor. For this notice, the NRS conversion factor is updated by the home health market basket update of 2.9 percent and reduced by the 2.75 percent reduction to the rates. The NRS conversion factor for CY 2008 was $52.35. Consequently, for CY 2009, the NRS conversion factor is $52.39 (52.35 × (1.029 × (1 − 0.0275))). The payment amounts for the various severity levels based on the updated conversion factor are calculated in Table 4.

TABLE 4—RELATIVE WEIGHTS FOR THE 6–SEVERITY NRS SYSTEM

Severity level	Points (scoring)	Relative weight	NRS payment amount
1	0	0.2698	$14.13
2	1 to 14	0.9742	51.04
3	15 to 27	2.6712	139.94
4	28 to 48	3.9686	207.91
5	49 to 98	6.1198	320.62
6	99+	10.5254	551.43

C. Home Health Care Quality Improvement

Section 5201(c)(2) of the DRA added section 1895(b)(3)(B)(v)(II) to the Act, requiring that, starting with the initial reporting year from July 2005 through June 2006 and each year thereafter, ''each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality.'' In response to the DRA requirements, CMS published information about the quality measures in the **Federal Register** as a proposed rule on August 3, 2006 (71 FR 44082–44090) and as a final rule on November 9, 2006 (71 FR 65903). We proposed, and made final, the decision to use the subset of OASIS data that is publicly reported on Home Health Compare, as the appropriate measures of home health quality.

Therefore, OASIS assessments submitted by HHAs to CMS in compliance with HHA conditions of participation for dates of service beginning July 1, 2007 and ending June 30, 2008 will fulfill the HH PPS quality reporting requirement for CY 2009 payments. This reporting time period allows for 12 full months of data and provides us the time necessary to analyze and make any necessary payment adjustments to the CY 2009 payment rates. The required quality measures for meeting the submission requirements for CY 2009 are the same as those required for meeting the submission requirements for CY 2008. These measures are:

- Improvement in Ambulation/Locomotion,
- Improvement in Bathing,
- Improvement in Transferring,
- Improvement in Management of Oral Medication,
- Improvement in Pain Interfering with Activity,
- Acute Care Hospitalization,
- Emergent Care,
- Discharge to Community,
- Improvement in Dyspnea,
- Improvement in Urinary incontinence,
- Improvement in surgical wounds, and
- Emergent Care for wound deterioration.

HHAs that meet the reporting requirements are eligible for the full home health market basket percentage increase. Consistent with our previous policy, home health agencies that are certified on or after May 1, 2007 for payments to be made in CY 2009 will be excluded from the quality reporting requirement in CY 2009 because data submission and analysis will not be possible for an agency certified this late in the reporting time period. At the earliest time possible after obtaining the CCN number, reporting is mandatory. These exclusions only affect quality reporting requirements and do not affect the agency's OASIS reporting responsibilities under the CoP submission requirement.

Additionally, section 1895(b)(3)(B)(v)(I) of the Act requires that all HHAs, unless covered by specific exclusions, meet the reporting requirement, or be subject to a 2 percent reduction in the home health market basket percentage increase. CMS will reconcile the OASIS submissions with claims data in order to verify full compliance with the quality reporting requirements on an annual cycle July 1 through June 30. The 2 percent reduction applies to all HHAs who have not submitted an OASIS assessment in the required time frame for payments beginning in January 2007 and each year thereafter. We will reconcile the OASIS submissions with claims data in order to verify full compliance with the quality reporting requirements. Section 1895(b)(3)(B)(v)(III) of the Act further requires that ''[t]he Secretary shall establish procedures for making data submitted under subclause (II) available to the public. Such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public with respect to the agency prior to such data being made public.'' To meet the requirement for making such data public, we will continue to use the Home Health Compare Web site, which lists HHAs geographically. Currently, the Home Health Compare Web site lists 12 quality measures from the OASIS set, and these 12 measures are all NQF-endorsed measures for public reporting. Consumers can search for all Medicare-approved home health providers that serve their city or zip code (which would include the quality measures) and then find the agencies offering the types of services they need. See *http://www.medicare.gov/HHCompare/Home.asp.* HHAs currently have pre-publication access every November to their own agency's quality data (collected and periodically updated by a contractor), which enables each agency to know how it is performing before public posting of data on the Home Health Compare Web site. In addition, each agency formally receives quarterly updates via the CASPER system known as Outcome Based Quality Improvement (OBQI) and Outcome Based Quality Monitoring (OBQM) and a report describing the agency patient characteristics based on OASIS. Continuing to use the OASIS instrument ensures that providers will not have an additional burden of reporting through a separate mechanism and that the costs associated with the development and testing of a new reporting mechanism can be avoided. For CY 2009, we will continue to require that the HHA submit OASIS data appropriate for the measurement of health care quality.

Over the past year, CMS has tested new patient level best practice and process measures for home health agencies, and has continued to refine the current OASIS instrument. CMS is testing the new measure the NQF has developed a Global Measure for Flu/Pneumonia vaccination across care settings. We anticipate making further modifications to the current OASIS items, including refinements to response categories. Any new data elements go through OMB process and measures go through the NQF consensus development process, prior to proposing them through the rulemaking process. Additionally, section 1895(b)(3)(B)(v)(II) of the Act requires each HHA to submit appropriate health care quality data in a form, manner, and at a time specified by the Secretary. Such measures would be evidence-based, clearly linked to improved outcomes, and reliably captured with the least burden to the provider. Data element revisions and measures across settings of care will be integral to CMS' vision of addressing national quality care priorities and use of a future single instrument for quality, payment, clinical relevance, and risk adjustment.

D. Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Home Health Care

As part of the U.S. Department of Health and Human Services (DHHS) Transparency Initiative, CMS plans to implement a process to measure and publicly report patient experiences with home health care using a survey developed by the Agency for Healthcare Research and Quality's (AHRQ's) Consumer Assessment of Healthcare Providers and Systems (CAHPS®) program. The CAHPS Home Health Care survey is part of a family of CAHPS® surveys that ask patients to report on and rate their experiences with health care. This notice provides an update on the development of the CAHPS Home Health Care survey, as initially discussed in the May 4, 2007 proposed rule (72 FR 25356, 25452). The CAHPS® Home Health Care survey presents home health patients with a set of standardized questions about their

home health care providers and the quality of their home health care. Prior to this survey, there was no national standard for collecting information about patient experience that would allow comparisons across all home health agencies.

The survey captures topics such as patients' interactions with home health staff, provider care and communication, and patient characteristics. The survey allows the patient to give an overall rating of the agency, and asks if the patient would recommend the agency to family and friends.

AHRQ conducted a field test to determine the length and content of the CAHPS Home Health Care Survey. CMS has submitted the survey to the National Quality Forum (NQF) for consideration and approval in their consensus process. NQF endorsement represents the consensus opinion of many healthcare providers, consumer groups, professional organizations, purchasers, federal agencies, and research and quality organizations. The final survey will be submitted to the Office of Management and Budget (OMB) for their approval under the Paperwork Reduction Act (PRA) process.

CMS is working with a contractor to develop protocols and guidelines for implementation of CAHPS Home Health Care survey. Administration of the survey will be conducted by multiple, independent survey vendors working under contract with home health agencies to facilitate data collection and reporting. During 2008, vendor training materials are being developed, and implementation procedures for data submission and processing will be finalized. Recruitment and training of vendors who wish to be approved to collect survey data will begin in 2009. The CAHPS Home Health Care survey will be implemented similar to the CAHPS Hospital survey where vendors are approved to conduct the survey and trained prior to agency participation in the survey. Home health agencies interested in learning about the survey are encouraged to view the CAHPS Home Health Care Survey Web site: *http://www.homehealthCAHPS.org.* They can also call toll-free: 1–866–354–0985 or send an email to the project team at *HHCAHPS@rti.org* for more information.

More information about the national implementation will be available next year in the Home Health Rule: The Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2010.

E. Outliers and the Fixed Dollar Loss Ratio

In addition to the regular 60-day case-mix and wage-adjusted episode payments, the HH PPS allows for outlier payments for episodes that incur unusually high costs. As noted in section I.A., of this notice, outlier payments are made for episodes for which the estimated cost exceeds a threshold amount. Section 1895(b)(5) of the Act requires that the estimated total outlier payments be no more than 5 percent of total estimated HH PPS payments for a given year. For a full description of our outlier policy, we refer to the CY 2008 HH PPS final rule with comment period (72 FR 49855–49857).

The wage adjusted fixed dollar loss (FDL) amount represents the amount of loss that an agency must bear before an episode becomes eligible for outlier payments. Annually, we review the percentage of outlier payments and adjust the FDL ratio as appropriate.

Past experience has shown that outlier payments have been increasing as a percent of total payments from 4.1 percent in CY 2005, to 5.0 percent in CY 2006, to 6.4 percent in CY 2007. More recent analysis estimates outlier payments to increase to approximately 8.1 percent in CY 2008 (an increase of slightly more than 27 percent).

In the CY 2008 final rule with comment period, in the interest of using the latest data and best analysis available, we performed supplemental analysis on the most recent data available in order to best estimate the FDL ratio. That analysis derived a final FDL ratio of 0.89 for CY 2008.

In order to determine the appropriate value for the FDL ratio for CY 2009 we performed an updated analysis using the most recent, complete available data (CY 2007), applying a methodology similar to that which we used to update the FDL ratio in the CY 2008 HH PPS final rule with comment. That updated analysis projects that in CY 2009 we will expend an estimated 10.26 percent of total estimated HH PPS payments in outlier payments, more than double our 5 percent statutory limit. However, our analysis also revealed that this growth in outlier payments is primarily the result of excessive growth in a few specific areas of the country. Specifically, we have noticed statistical anomalies in outlier payments, as a percentage of total HH PPS payments, in areas such as Miami-Dade, Florida, where outlier payments to providers far exceed the national average and the 5 percent target for outlier payments. Using similar analysis to what was performed for the CY 2009 final rule with comment; we estimated that we would need to raise our FDL ratio from 0.89 to 2.71 for CY 2009. This is a dramatic change that appears to be driven by statistical anomalies in outlier payments in areas such as Miami-Dade, Florida. In addition, the size of these statistical anomalies raises concerns about the medical necessity of the outlier episodes in some areas. We will be examining outlier payments in these areas in more detail and will take action to remedy inappropriate outlier payments as necessary.

Therefore, we believe that raising the FDL ratio to 2.71 is not justified at this time, given the statistical outlier data anomalies that we have identified in certain areas, and the actions that are underway to address excessive, suspect outlier payments that are occurring in these areas. We believe the most reasonable policy to achieve paying no more than 5 percent outlier payments as a percentage of total estimated HH PPS payments is through the combined effects of maintaining the current (CY 2008) FDL ratio of 0.89 in CY 2009 and the actions being taken to remedy any inappropriate outlier payments in these areas of the country where outlier data anomalies exist. Any further update to the FDL ratio, if any, will not occur until future rulemaking when we expect to have a better understanding of appropriate outlier payments, particularly in those areas of the country with extremely high outlier payments as a percentage of total HH PPS payments.

F. Hospital Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under the HH PPS to account for area wage differences. As discussed previously, we apply the appropriate wage index value to the labor portion (77.082 percent) of the HH PPS rates based on the site of service for the beneficiary (defined by section 1861(m) of the Act as the beneficiary's place of residence). Generally, we determine each HHA's labor market area based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). We have consistently used the pre-floor, pre-reclassified hospital wage index data to adjust the labor portion of the HH PPS rates. We believe the use of the pre-floor, pre-reclassified hospital wage index data results in the appropriate adjustment to

the labor portion of the costs as required by statute.

In the November 9, 2005 final rule for CY 2006 (70 FR 68132), we adopted revised labor market area definitions based on Core-Based Statistical Areas (CBSAs). At the time, we noted that these were the same labor market area definitions (based on OMB's new CBSA designations) implemented under the Hospital Inpatient Prospective Payment System (IPPS). In adopting the CBSA designations, we identified some geographic areas where there are no hospitals and, thus, no hospital wage data on which to base the calculation of the home health wage index. We continue to use the methodology discussed in the November 9, 2006 final rule for CY 2007 (71 FR 65884) to address the geographic areas that lack hospital wage data on which to base the calculation of their home health wage index. For rural areas that do not have IPPS hospitals, we use the average wage index from all contiguous CBSAs as a reasonable proxy. This methodology is used to calculate the wage index for rural Massachusetts. However, we could not apply this methodology to rural Puerto Rico due to the distinct economic circumstances that exist there, but instead continue using the most recent wage index previously available for that area (from CY 2005). For urban areas without IPPS hospitals, we use the average wage index of all urban areas within the State as a reasonable proxy for the wage index for that CBSA. The only urban area without IPPS hospital wage data is Hinesville-Fort Stewart, Georgia (CBSA 25980).

1. Clarification of New England Deemed Counties

We are taking this opportunity to address the change in the treatment of ''New England deemed counties'' (that is, those counties in New England listed at 42 CFR 412.64(b)(1)(ii)(B) that were deemed to be part of urban areas under section 601(g) of the Social Security Amendments of 1983) that was made in the FY 2008 IPPS final rule with comment period (72 FR 47337 through 47338, August 22, 2007). These counties include the following: Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island. Of these five ''New England deemed counties,'' three (York County, ME; Sagadahoc County, ME; and Newport County, RI) are also included in metropolitan statistical areas defined by OMB and are considered urban under both the current IPPS and HH PPS labor market area definitions in § 412.64(b)(1)(ii)(A). The remaining two, Litchfield County, CT, and Merrimack County, NH, are geographically located in areas that are considered rural under the current IPPS (and HH PPS) labor market area definitions, but have been previously deemed urban under the IPPS in certain circumstances, as discussed below.

In the FY 2008 IPPS final rule with comment period, § 412.64(b)(1)(ii)(B) was revised such that the two ''New England deemed counties'' that are still considered rural under the OMB definitions (Litchfield County, CT and Merrimack County, NH), are no longer considered urban effective for discharges occurring on or after October 1, 2007, and therefore, are considered rural in accordance with § 412.64(b)(1)(ii)(C). However, for purposes of payment under the IPPS, acute-care hospitals located within those areas are treated as being reclassified to their deemed urban area effective for discharges occurring on or after October 1, 2007 (see 72 FR 47337 through 47338). We note that the HH PPS does not provide for such geographic reclassification. Also, in the FY 2008 IPPS final rule with comment period (72 FR 47338), we explained that we have limited this policy change for the ''New England deemed counties'' only to IPPS hospitals, and any change to non-IPPS provider wage indexes would be addressed in the respective payment system rules. Accordingly, we are taking this opportunity to clarify the treatment of ''New England deemed counties'' under the HH PPS in this notice.

As discussed above, the HH PPS has consistently used the IPPS definition of ''urban'' and ''rural'' with regard to the wage index used in the HH PPS. Historical changes to the labor market area/geographic classifications and annual updates to the wage index values under the HH PPS are made effective January 1 each year. When we established the most recent HH PPS payment rate update, effective for HH services provided on or after January 1, 2008 through December 31, 2008, we considered the ''New England deemed counties'' (including Litchfield County, CT and Merrimack County, NH) as urban for CY 2008, as evidenced by the inclusion of Litchfield County as one of the constituent counties of urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT), and the inclusion of Merrimack County as one of the constituent counties of urban CBSA 31700 (Manchester-Nashua, NH).

At 42 CFR 484.202, the terms ''rural'' and ''urban'' are defined according to the definitions of those terms as used in the IPPS. Applying the IPPS definitions, Litchfield County, CT and Merrimack County, NH are not considered ''urban'' under § 412.64(b)(1)(ii)(A) through (B) as revised under the FY 2008 IPPS final rule and, therefore, are considered ''rural'' under § 412.64(b)(1)(ii)(C). Accordingly, reflecting our policy to use the IPPS definitions of ''urban'' and ''rural,'' these two counties will be considered ''rural'' under the HH PPS effective with the next update of the HH PPS payment rates on January 1, 2009, and will no longer be included in urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT) and urban CBSA 31700 (Manchester-Nashua, NH), respectively. We note that this policy is consistent with our policy of not taking into account IPPS geographic reclassifications in determining payments under the HH PPS.

2. Multi-Campus Hospital Wage Index Data

In the CY 2008 HH PPS final rule with comment period, we established HH PPS wage index values for CY 2008 calculated from the same data (collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2004) used to compute the FY 2008 acute care hospital inpatient wage index, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. However, the IPPS policy that apportions the wage data for multi-campus hospitals was not finalized before the HH PPS final rule with comment period.

We are continuing to use IPPS wage data for this CY 2009 update notice because we believe that in the absence of home health-specific wage data, using the hospital inpatient wage data is appropriate and reasonable for the HH PPS. We note that the IPPS wage data used to determine the CY 2009 HH wage index values reflect our policy that was adopted under the IPPS beginning in FY 2008, which apportions the wage data for multi-campus hospitals located in different labor market areas, or Core-Based Statistical Areas (CBSAs), to each CBSA where the campuses are located (see the FY 2008 IPPS final rule with comment period (72 FR 47317 through 47320)). Specifically, for the CY 2009 HH PPS, the wage index was computed using IPPS wage data (published by hospitals for cost reporting periods beginning in 2005, as with the FY 2009 IPPS wage index), which allocated salaries and hours to the campuses of two multi-campus hospitals with campuses that are located in different labor areas; one is Massachusetts and the other is Illinois. The wage index

values for the CY 2009 HH PPS in the following CBSAs are affected by this policy: Boston-Quincy, MA (CBSA 14484), Providence-New Bedford-Falls River, RI-MA (CBSA 39300), Chicago-Naperville-Joliet, IL (CBSA 16974) and Lake County-Kenosha County, IL-WI (CBSA 29404) (please refer to Addendum B in this notice).

As previously discussed in the July 3, 2000 final rule (65 FR 41128), the statute provides that the wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustment factors. Since publication of the July 3, 2000 final rule, we continue to believe that the use of the pre-floor and pre-reclassified hospital wage index data results in the appropriate and reasonable adjustment to the labor portion of the costs as required by statute. The HH PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting. See Addenda A and B of this notice, respectively, for the rural and urban pre-floor, pre-reclassified hospital wage indexes for 2009. The 2009 wage index is based on data collected from hospital cost reports submitted for cost reporting periods beginning during FY 2005. These data reflect the multi-campus and New England deemed counties policies discussed above.

Under the HH PPS, we use the wage index value associated with the labor market in which the beneficiary's home is located. As has been our longstanding practice, any area not included in an MSA (urban area) is considered to be nonurban (§ 412.64(b)(1)(ii)(C)) and receives the statewide rural wage index value (see, for example, 65 FR 41173).

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of finding and its reasons in the notice issued.

We find that it is unnecessary, impracticable and contrary to the public interest to undertake proposed notice and comment rulemaking in this Notice. We believe it is unnecessary because the statute requires annual updates to the HH PPS rates and the methodologies used to update the rates have been previously subject to public comment; we are simply applying the methodology to the most recent data. With respect to the update of the outlier FDL ratio, we find that insofar as we have deviated from our usual methodology in this calendar year, such change is an analytical change. Moreover, we believe that the difficulty of deriving a new methodology to address the limited data discrepancies in localized areas of the country makes issuing a notice of proposed rulemaking in this instance impracticable. Moreover, it would be contrary to the public interest to undertake notice and comment rulemaking as it would impose a hardship on home health agencies and their patients by delaying publication of this update in order to solicit comments. Since it would pose additional harm to those home health agencies across the country that would be deemed ineligible for outlier payments because of these localized data discrepancies, applying the FDL analysis that we have used in past years is likewise contrary to the public interest for CY 2009. Therefore, we find good cause to waive notice and comment procedures for CY 2009.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 501 *et seq.*).

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866, as amended, which merely reassigns responsibility of duties directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any 1 year). This notice, as defined by Executive Order 12866, is not an economically significant rule. This notice would not be considered major under the Congressional Review Act. The update set forth in this notice applies to Medicare payments under HH PPS in CY 2009. Accordingly, the following analysis describes the impact in CY 2009 only.

We estimate that the net impact in this notice, including a 2.75 percent reduction to the payment rate to account for the case-mix change adjustment, is estimated to be approximately $30 million in CY 2009 expenditures. This total estimated $30 million impact reflects the distributional effects of an updated wage index (−$20 million) as well as the 2.9 percent home health market basket increase (an estimated additional $490 million in CY 2009 expenditures attributable only to the CY 2009 home health market basket update), and the 2.75 percent decrease (−$440 million for the second year of a 4-year phase-in) to the HH PPS national standardized 60-day episode rate to account for the case-mix change adjustment under the HH PPS. The $30 million is reflected in column 3 of Table 5 as a 0.15 percent increase in expenditures when comparing the current CY 2008 system to the CY 2009 system.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any 1 year. For purposes of the RFA, approximately 75 percent of HHAs are considered small businesses according to the Small Business Administration's size standards with total revenues of $13.5 million or less in any 1 year. Individuals and States are not included in the definition of a small entity. As stated above, this notice will have an estimated positive effect upon small entities that are HHAs (see Section IV.B ''Anticipated Effects'', of this rule, for supporting analysis).

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital

as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million adjusted for inflation. Using the Gross Domestic Price Deflator, the inflation adjusted threshold for 2008 is approximately $130 million. We believe this notice will not mandate expenditures in that amount.

Executive Order 13132 established certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism. We have determined that this notice would not have substantial direct effects on the rights, roles, and responsibilities of States.

B. Anticipated Effects

This notice updates the HH PPS rates contained in the CY 2008 HH PPS final rule with comment period. We use the latest data and best analysis available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based on the latest available Medicare claims from 2006. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the MMA, the DRA, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Table 5 represents how home health agencies are likely to be affected by the policy changes described in this notice. Column one of this table classifies HHAs according to a number of characteristics including provider type, geographic region, and urban versus rural location. For the purposes of analyzing impacts on payments, we performed four simulations and compared them to each other. Based on our estimate that outliers, as a percentage of total HH PPS payments, will be at least 5 percent in CY 2008, the 2008 baseline, for the purposes of these simulations, we assumed that the full 5 percent outlay for outliers will be paid. The first simulation estimates 2008 payments under the current system (to include the 2008 wage index and 2008 payment rates). The second simulation estimates CY 2008 payments under the current system, but with the CY 2009 wage index. The second simulation produces an estimate of the effect of the CY 2009 wage index only. The third simulation estimates the effect of the CY 2009 payments using the CY 2009 payment rates and the CY 2008 wage index. The fourth simulation estimates CY 2009 payments using the new CY 2009 payment rates and CY 2009 wage index.

These four simulations allow us to demonstrate the effects of the new CY 2009 wage index and a new 2009 payment rates as a percentage change in estimated expenditures. Specifically, the second column of Table 5 shows the percent change due to the effects of the CY 2009 wage index. The third column of Table 5 shows the percent change due to the combined effects of the CY 2009 wage index and the CY 2009 home health market basket update and the case-mix reduction.

Column three shows the percentage change in estimated total payments in moving from the current CY 2008 to the revised CY 2009 system outlined in this notice. Our estimate of the change in total payments between CY 2008 and CY 2009 is an increase of approximately 0.15 percent.

In general, most HHAs are estimated to see increases in total payments from CY 2008 to CY 2009. The increases range from −0.01 percent for other voluntary/non-profit freestanding agencies to 0.25 percent for facility-based governmental HHAs.

The only rural HHA's estimated to see a decrease are free-standing, other voluntary/non-profit HHAs. The decrease is estimated to be 0.07 percent. In total, payments are estimated to increase 0.17 percent to HHAs in rural areas and 0.19 percent to HHAs in urban areas. The only urban HHAs estimated to see a decrease are facility-based voluntary/non-profits with an estimated decrease of 0.05 percent. Overall, payments are estimated to increase 0.15 percent to HHAs in urban areas.

HHAs in the South and the West are expected to experience increases of 0.08 percent and 1.56 percent respectively from CY 2008 to CY 2009. The North and the Midwest are estimated to experience decreases of 0.08 percent and 0.44 percent respectively. It is estimated that New England, East South Central, West South Central, West North Central and Pacific HHAs will experience percentage increases of 0.36 percent, 0.02 percent, 0.34 percent, 0.61 percent, and 2.21 percent respectively. Conversely, Mid Atlantic, South Atlantic, East North Central, and Mountain area HHAs are expected to experience decreases of 0.32 percent, 0.18 percent, 0.70 percent, and 0.09 percent respectively. In general, all HHAs of varying facility size are expected to experience increases (ranging from 0.04 percent to 0.53 percent) in total payments from CY 2008 to CY 2009.

TABLE 5—IMPACT BY AGENCY TYPE

Group	Percent change due to the effects of the updated wage index only	Percent change due to the effects of the updated wage index, the 2.9% home health market basket update, and the 2.75% reduction to the rates
Type of Facility		
Free-Standing/Other Vol/NP	−0.22	−0.01
Free-Standing/Other Proprietary	−0.09	0.24
Free-Standing/Other Government	−0.11	0.07
Facility-Based Vol/NP	−0.16	0.01
Facility-Based Proprietary	−0.01	0.14
Facility-Based Government	0.10	0.25
Subtotal: Freestanding	−0.12	0.17
Subtotal: Facility-based	−0.12	0.05
Subtotal: Vol/PNP	−0.19	0.00
Subtotal: Proprietary	−0.09	0.24
Subtotal: Government	−0.01	0.16
Total	−0.12	0.15
Type of Facility (Rural* Only)		
Free-Standing/Other Vol/NP	−0.22	−0.07
Free-Standing/Other Proprietary	0.07	0.23
Free-Standing/Other Government	−0.16	0.01
Facility-Based Vol/NP	0.06	0.21
Facility-Based Proprietary	0.20	0.33
Facility-Based Government	0.09	0.23
Type of Facility (Urban* Only)		
Free-Standing/Other Vol/NP	−0.22	0.00
Free-Standing/Other Proprietary	−0.12	0.25
Free-Standing/Other Government	−0.06	0.16
Facility-Based Vol/NP	−0.22	0.05
Facility-Based Proprietary	−0.16	0.01
Facility-Based Government	0.11	0.28
Type of Facility (Urban* or Rural*)		
Rural*	0.01	0.17
Urban*	−0.15	0.15
Total	−0.12	0.15
Facility Location: Region*		
North	−0.30	−0.08
South	−0.25	0.08
Midwest	−0.58	−0.44
West	1.20	1.56
Other	−0.09	0.07
Total	−0.12	0.15
Facility Location: Area of the Country		
New England	0.15	0.36
Mid Atlantic	−0.55	−0.32
South Atlantic	−0.65	−0.18
East South Central	−0.11	0.02
West South Central	0.06	0.34
East North Central	−0.84	−0.70
West North Central	0.45	0.61
Mountain	−0.31	−0.09
Pacific	1.80	2.21
Other	−0.09	0.07
Total	−0.12	0.15

TABLE 5—IMPACT BY AGENCY TYPE—Continued

Group	Percent change due to the effects of the updated wage index only	Percent change due to the effects of the updated wage index, the 2.9% home health market basket update, and the 2.75% reduction to the rates
Facility Size (Number of First Episodes)		
1 to 5	−0.29	0.34
6 to 9	−0.41	0.17
10 to 14	−0.38	0.17
15 to 19	−0.39	0.19
20 to 29	−0.25	0.28
30 to 49	−0.10	0.37
50 to 99	0.06	0.50
100 to 199	0.07	0.36
200 or More	−0.17	0.04
Total	−0.12	0.15

Note: Based on a 20 percent sample of CY 2006 claims linked to OASIS assessments.

* Urban/rural status, for the purposes of these simulations, is based on the wage index on which episode payment is based. The wage index is based on the site of service of the beneficiary.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 9, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: October 24, 2008.

Michael O. Leavitt,

Secretary.

Note: The following addenda will not be published in the Code of Federal Regulations.

Addendum A—CY 2009 Wage Index for Rural Areas by CBSA; Applicable Pre-floor and Pre-Reclassified Hospital Wage Index

CBSA code	Nonurban area	Wage index
01	Alabama	0.7587
02	Alaska	1.1898
03	Arizona	0.8453
04	Arkansas	0.7473
05	California	1.2275
06	Colorado	0.9570
07	Connecticut	1.1016
08	Delaware	0.9962
10	Florida	0.8504
11	Georgia	0.7612
12	Hawaii	1.0999
13	Idaho	0.7651
14	Illinois	0.8386
15	Indiana	0.8473
16	Iowa	0.8804
17	Kansas	0.8052
18	Kentucky	0.7803
19	Louisiana	0.7447
20	Maine	0.8644
21	Maryland	0.8883
22	Massachusetts[1]	1.1670
23	Michigan	0.8887
24	Minnesota	0.9059
25	Mississippi	0.7584
26	Missouri	0.7982
27	Montana	0.8658
28	Nebraska	0.8730
29	Nevada	0.9382
30	New Hampshire	1.0219
31	New Jersey[1]	.....
32	New Mexico	0.8812
33	New York	0.8145
34	North Carolina	0.8576
35	North Dakota	0.7205
36	Ohio	0.8588
37	Oklahoma	0.7732
38	Oregon	1.0218
39	Pennsylvania	0.8365
40	Puerto Rico[1]	0.4047
41	Rhode Island[1]	.....
42	South Carolina	0.8538
43	South Dakota	0.8603
44	Tennessee	0.7789
45	Texas	0.7894
46	Utah	0.8267
47	Vermont	1.0079
48	Virgin Islands	0.6971
49	Virginia	0.7861
50	Washington	1.0181
51	West Virginia	0.7503
52	Wisconsin	0.9373
53	Wyoming	0.9315
65	Guam	0.9611

[1] All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural, however, no short-term, acute care hospitals are located in the area(s) for CY 2009.

Addendum B—CY 2009 Wage Index for Urban Areas by CBSA; Applicable Pre-Floor and Pre-Reclassified Hospital Wage Index

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX	0.8097
	Callahan County, TX.	
	Jones County, TX.	
	Taylor County, TX.	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3399
	Aguada Municipio, PR.	
	Aguadilla Municipio, PR.	

CBSA code	Urban area (constituent counties)	Wage index
	Añasco Municipio, PR.	
	Isabela Municipio, PR.	
	Lares Municipio, PR.	
	Moca Municipio, PR.	
	Rincón Municipio, PR.	
	San Sebastián Municipio, PR.	
10420	Akron, OH	0.8917
	Portage County, OH.	
	Summit County, OH.	
10500	Albany, GA	0.8703
	Baker County, GA.	
	Dougherty County, GA.	
	Lee County, GA.	
	Terrell County, GA.	
	Worth County, GA.	
10580	Albany-Schenectady-Troy, NY	0.8707
	Albany County, NY.	
	Rensselaer County, NY.	
	Saratoga County, NY.	
	Schenectady County, NY.	
	Schoharie County, NY.	
10740	Albuquerque, NM	0.9210
	Bernalillo County, NM.	
	Sandoval County, NM.	
	Torrance County, NM.	
	Valencia County, NM.	
10780	Alexandria, LA	0.8130
	Grant Parish, LA.	
	Rapides Parish, LA.	
10900	Allentown-Bethlehem-Easton, PA–NJ	0.9499
	Warren County, NJ.	
	Carbon County, PA.	
	Lehigh County, PA.	
	Northampton County, PA.	
11020	Altoona, PA	0.8521
	Blair County, PA.	
11100	Amarillo, TX	0.8927
	Armstrong County, TX.	
	Carson County, TX.	
	Potter County, TX.	
	Randall County, TX.	
11180	Ames, IA	0.9487
	Story County, IA.	
11260	Anchorage, AK	1.1931
	Anchorage Municipality, AK.	
	Matanuska-Susitna Borough, AK.	
11300	Anderson, IN	0.8760
	Madison County, IN.	
11340	Anderson, SC	0.9570
	Anderson County, SC.	
11460	Ann Arbor, MI	1.0445
	Washtenaw County, MI.	
11500	Anniston-Oxford, AL	0.7927
	Calhoun County, AL.	
11540	Appleton, WI	0.9440
	Calumet County, WI.	
	Outagamie County, WI.	
11700	Asheville, NC	0.9142
	Buncombe County, NC.	
	Haywood County, NC.	
	Henderson County, NC.	
	Madison County, NC.	
12020	Athens-Clarke County, GA	0.9591
	Clarke County, GA.	
	Madison County, GA.	
	Oconee County, GA.	
	Oglethorpe County, GA.	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9754
	Barrow County, GA.	
	Bartow County, GA.	
	Butts County, GA.	
	Carroll County, GA.	
	Cherokee County, GA.	

CBSA code	Urban area (constituent counties)	Wage index
	Clayton County, GA.	
	Cobb County, GA.	
	Coweta County, GA.	
	Dawson County, GA.	
	DeKalb County, GA.	
	Douglas County, GA.	
	Fayette County, GA.	
	Forsyth County, GA.	
	Fulton County, GA.	
	Gwinnett County, GA.	
	Haralson County, GA.	
	Heard County, GA.	
	Henry County, GA.	
	Jasper County, GA.	
	Lamar County, GA.	
	Meriwether County, GA.	
	Newton County, GA.	
	Paulding County, GA.	
	Pickens County, GA.	
	Pike County, GA.	
	Rockdale County, GA.	
	Spalding County, GA.	
	Walton County, GA.	
12100	Atlantic City, NJ	1.1973
	Atlantic County, NJ.	
12220	Auburn-Opelika, AL	0.7544
	Lee County, AL.	
12260	Augusta-Richmond County, GA–SC	0.9615
	Burke County, GA.	
	Columbia County, GA.	
	McDuffie County, GA.	
	Richmond County, GA.	
	Aiken County, SC.	
	Edgefield County, SC.	
12420	Austin-Round Rock, TX	0.9536
	Bastrop County, TX.	
	Caldwell County, TX.	
	Hays County, TX.	
	Travis County, TX.	
	Williamson County, TX.	
12540	Bakersfield, CA	1.1189
	Kern County, CA.	
12580	Baltimore-Towson, MD	1.0055
	Anne Arundel County, MD.	
	Baltimore County, MD.	
	Carroll County, MD.	
	Harford County, MD.	
	Howard County, MD.	
	Queen Anne's County, MD.	
	Baltimore City, MD.	
12620	Bangor, ME	1.0174
	Penobscot County, ME.	
12700	Barnstable Town, MA	1.2643
	Barnstable County, MA.	
12940	Baton Rouge, LA	0.8163
	Ascension Parish, LA.	
	East Baton Rouge Parish, LA.	
	East Feliciana Parish, LA.	
	Iberville Parish, LA.	
	Livingston Parish, LA.	
	Pointe Coupee Parish, LA.	
	St. Helena Parish, LA.	
	West Baton Rouge Parish, LA.	
	West Feliciana Parish, LA.	
12980	Battle Creek, MI	1.0120
	Calhoun County, MI.	
13020	Bay City, MI	0.9248
	Bay County, MI.	
13140	Beaumont-Port Arthur, TX	0.8479
	Hardin County, TX.	
	Jefferson County, TX.	
	Orange County, TX.	
13380	Bellingham, WA	1.1640

CBSA code	Urban area (constituent counties)	Wage index
	Whatcom County, WA.	
13460	Bend, OR	1.1375
	Deschutes County, OR.	
13644	Bethesda-Frederick-Gaithersburg, MD	1.0548
	Frederick County, MD.	
	Montgomery County, MD.	
13740	Billings, MT	0.8805
	Carbon County, MT.	
	Yellowstone County, MT.	
13780	Binghamton, NY	0.8574
	Broome County, NY.	
	Tioga County, NY.	
13820	Birmingham-Hoover, AL	0.8792
	Bibb County, AL.	
	Blount County, AL.	
	Chilton County, AL.	
	Jefferson County, AL.	
	St. Clair County, AL.	
	Shelby County, AL.	
	Walker County, AL.	
13900	Bismarck, ND	0.7148
	Burleigh County, ND.	
	Morton County, ND.	
13980	Blacksburg-Christiansburg-Radford, VA	0.8155
	Giles County, VA.	
	Montgomery County, VA.	
	Pulaski County, VA.	
	Radford City, VA.	
14020	Bloomington, IN	0.8979
	Greene County, IN.	
	Monroe County, IN.	
	Owen County, IN.	
14060	Bloomington-Normal, IL	0.9323
	McLean County, IL.	
14260	Boise City-Nampa, ID	0.9268
	Ada County, ID.	
	Boise County, ID.	
	Canyon County, ID.	
	Gem County, ID.	
	Owyhee County, ID.	
14484	Boston-Quincy, MA	1.1897
	Norfolk County, MA.	
	Plymouth County, MA.	
	Suffolk County, MA.	
14500	Boulder, CO	1.0302
	Boulder County, CO.	
14540	Bowling Green, KY	0.8388
	Edmonson County, KY.	
	Warren County, KY.	
14600	Bradenton-Sarasota-Venice, FL	0.9900
14740	Bremerton-Silverdale, WA	1.0770
	Kitsap County, WA.	
14860	Bridgeport-Stamford-Norwalk, CT	1.2868
	Fairfield County, CT.	
15180	Brownsville-Harlingen, TX	0.8916
	Cameron County, TX.	
15260	Brunswick, GA	0.9567
	Brantley County, GA.	
	Glynn County, GA.	
	McIntosh County, GA.	
15380	Buffalo-Niagara Falls, NY	0.9537
	Erie County, NY.	
	Niagara County, NY.	
15500	Burlington, NC	0.8736
	Alamance County, NC.	
15540	Burlington-South Burlington, VT	0.9254
	Chittenden County, VT.	
	Franklin County, VT.	
	Grand Isle County, VT.	
15764	Cambridge-Newton-Framingham, MA	1.1086
	Middlesex County, MA.	
15804	Camden, NJ	1.0346
	Burlington County, NJ.	

CBSA code	Urban area (constituent counties)	Wage index
	Camden County, NJ.	
	Gloucester County, NJ.	
15940	Canton-Massillon, OH	0.8841
	Carroll County, OH.	
	Stark County, OH.	
15980	Cape Coral-Fort Myers, FL	0.9396
	Lee County, FL.	
16180	Carson City, NV	1.0128
	Carson City, NV.	
16220	Casper, WY	0.9579
	Natrona County, WY.	
16300	Cedar Rapids, IA	0.8919
	Benton County, IA.	
	Jones County, IA.	
	Linn County, IA.	
16580	Champaign-Urbana, IL	0.9461
	Champaign County, IL.	
	Ford County, IL.	
	Piatt County, IL.	
16620	Charleston, WV	0.8275
	Boone County, WV.	
	Clay County, WV.	
	Kanawha County, WV.	
	Lincoln County, WV.	
	Putnam County, WV.	
16700	Charleston-North Charleston, SC	0.9209
	Berkeley County, SC.	
	Charleston County, SC.	
	Dorchester County, SC.	
16740	Charlotte-Gastonia-Concord, NC–SC	0.9595
	Anson County, NC.	
	Cabarrus County, NC.	
	Gaston County, NC.	
	Mecklenburg County, NC.	
	Union County, NC.	
	York County, SC.	
16820	Charlottesville, VA	0.9816
	Albemarle County, VA.	
	Fluvanna County, VA.	
	Greene County, VA.	
	Nelson County, VA.	
	Charlottesville City, VA.	
16860	Chattanooga, TN–GA	0.8878
	Catoosa County, GA.	
	Dade County, GA.	
	Walker County, GA.	
	Hamilton County, TN.	
	Marion County, TN.	
	Sequatchie County, TN.	
16940	Cheyenne, WY	0.9276
	Laramie County, WY.	
16974	Chicago-Naperville-Joliet, IL	1.0399
	Cook County, IL.	
	DeKalb County, IL.	
	DuPage County, IL.	
	Grundy County, IL.	
	Kane County, IL.	
	Kendall County, IL.	
	McHenry County, IL.	
	Will County, IL.	
17020	Chico, CA	1.0897
	Butte County, CA.	
17140	Cincinnati-Middletown, OH-KY-IN	0.9687
	Dearborn County, IN.	
	Franklin County, IN.	
	Ohio County, IN.	
	Boone County, KY.	
	Bracken County, KY.	
	Campbell County, KY.	
	Gallatin County, KY.	
	Grant County, KY.	
	Kenton County, KY.	
	Pendleton County, KY.	

CBSA code	Urban area (constituent counties)	Wage index
	Brown County, OH.	
	Butler County, OH.	
	Clermont County, OH.	
	Hamilton County, OH.	
	Warren County, OH.	
17300	Clarksville, TN-KY	0.8298
	Christian County, KY.	
	Trigg County, KY.	
	Montgomery County, TN.	
	Stewart County, TN.	
17420	Cleveland, TN	0.8010
	Bradley County, TN.	
	Polk County, TN.	
17460	Cleveland-Elyria-Mentor, OH	0.9241
	Cuyahoga County, OH.	
	Geauga County, OH.	
	Lake County, OH.	
	Lorain County, OH.	
	Medina County, OH.	
17660	Coeur d'Alene, ID	0.9322
	Kootenai County, ID.	
17780	College Station-Bryan, TX	0.9346
	Brazos County, TX.	
	Burleson County, TX.	
	Robertson County, TX.	
17820	Colorado Springs, CO	0.9977
	El Paso County, CO.	
	Teller County, CO.	
17860	Columbia, MO	0.8540
	Boone County, MO.	
	Howard County, MO.	
17900	Columbia, SC	0.8933
	Calhoun County, SC.	
	Fairfield County, SC.	
	Kershaw County, SC.	
	Lexington County, SC.	
	Richland County, SC.	
	Saluda County, SC.	
17980	Columbus, GA-AL	0.8739
	Russell County, AL.	
	Chattahoochee County, GA.	
	Harris County, GA.	
	Marion County, GA.	
	Muscogee County, GA.	
18020	Columbus, IN	0.9739
	Bartholomew County, IN.	
18140	Columbus, OH	0.9943
	Delaware County, OH.	
	Fairfield County, OH.	
	Franklin County, OH.	
	Licking County, OH.	
	Madison County, OH.	
	Morrow County, OH.	
	Pickaway County, OH.	
	Union County, OH.	
18580	Corpus Christi, TX	0.8598
	Aransas County, TX.	
	Nueces County, TX.	
	San Patricio County, TX.	
18700	Corvallis, OR	1.1304
	Benton County, OR.	
19060	Cumberland, MD-WV	0.7816
	Allegany County, MD.	
	Mineral County, WV.	
19124	Dallas-Plano-Irving, TX	0.9945
	Collin County, TX.	
	Dallas County, TX.	
	Delta County, TX.	
	Denton County, TX.	
	Ellis County, TX.	
	Hunt County, TX.	
	Kaufman County, TX.	
	Rockwall County, TX.	

CBSA code	Urban area (constituent counties)	Wage index
19140	Dalton, GA	0.8705
	Murray County, GA.	
	Whitfield County, GA.	
19180	Danville, IL	0.9374
	Vermilion County, IL.	
19260	Danville, VA	0.8395
	Pittsylvania County, VA.	
	Danville City, VA.	
19340	Davenport-Moline-Rock Island, IA-IL	0.8435
	Henry County, IL.	
	Mercer County, IL.	
	Rock Island County, IL.	
	Scott County, IA.	
19380	Dayton, OH	0.9203
	Greene County, OH.	
	Miami County, OH.	
	Montgomery County, OH.	
	Preble County, OH.	
19460	Decatur, AL	0.7803
	Lawrence County, AL.	
	Morgan County, AL.	
19500	Decatur, IL	0.8145
	Macon County, IL.	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.8890
	Volusia County, FL.	
19740	Denver-Aurora, CO	1.0818
	Adams County, CO.	
	Arapahoe County, CO.	
	Broomfield County, CO.	
	Clear Creek County, CO.	
	Denver County, CO.	
	Douglas County, CO.	
	Elbert County, CO.	
	Gilpin County, CO.	
	Jefferson County, CO.	
	Park County, CO.	
19780	Des Moines, IA	0.9535
	Dallas County, IA.	
	Guthrie County, IA.	
	Madison County, IA.	
	Polk County, IA.	
	Warren County, IA.	
19804	Detroit-Livonia-Dearborn, MI	0.9958
	Wayne County, MI.	
20020	Dothan, AL	0.7613
	Geneva County, AL.	
	Henry County, AL.	
	Houston County, AL.	
20100	Dover, DE	1.0325
	Kent County, DE.	
20220	Dubuque, IA	0.8380
	Dubuque County, IA.	
20260	Duluth, MN–WI	1.0363
	Carlton County, MN.	
	St. Louis County, MN.	
	Douglas County, WI.	
20500	Durham, NC	0.9732
	Chatham County, NC.	
	Durham County, NC.	
	Orange County, NC.	
	Person County, NC.	
20740	Eau Claire, WI	0.9668
	Chippewa County, WI.	
	Eau Claire County, WI.	
20764	Edison, NJ	1.1283
	Middlesex County, NJ.	
	Monmouth County, NJ.	
	Ocean County, NJ.	
	Somerset County, NJ.	
20940	El Centro, CA	0.8746
	Imperial County, CA.	
21060	Elizabethtown, KY	0.8525
	Hardin County, KY.	

CBSA code	Urban area (constituent counties)	Wage index
	Larue County, KY.	
21140	Elkhart-Goshen, IN	0.9568
	Elkhart County, IN.	
21300	Elmira, NY	0.8247
	Chemung County, NY.	
21340	El Paso, TX	0.8694
	El Paso County, TX.	
21500	Erie, PA	0.8713
	Erie County, PA.	
21660	Eugene-Springfield, OR	1.1061
	Lane County, OR.	
21780	Evansville, IN–KY	0.8690
	Gibson County, IN.	
	Posey County, IN.	
	Vanderburgh County, IN.	
	Warrick County, IN.	
	Henderson County, KY.	
	Webster County, KY.	
21820	Fairbanks, AK	1.1297
	Fairbanks North Star Borough, AK.	
21940	Fajardo, PR	0.4061
	Ceiba Municipio, PR.	
	Fajardo Municipio, PR.	
	Luquillo Municipio, PR.	
22020	Fargo, ND-MN	0.8166
	Cass County, ND.	
	Clay County, MN.	
22140	Farmington, NM	0.8051
	San Juan County, NM.	
22180	Fayetteville, NC	0.9340
	Cumberland County, NC.	
	Hoke County, NC.	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8970
	Benton County, AR.	
	Madison County, AR.	
	Washington County, AR.	
	McDonald County, MO.	
22380	Flagstaff, AZ	1.1743
	Coconino County, AZ.	
22420	Flint, MI	1.1425
	Genesee County, MI.	
22500	Florence, SC	0.8130
	Darlington County, SC.	
	Florence County, SC.	
22520	Florence-Muscle Shoals, AL	0.7871
	Colbert County, AL.	
	Lauderdale County, AL.	
22540	Fond du Lac, WI	0.9293
	Fond du Lac County, WI.	
22660	Fort Collins-Loveland, CO	0.9867
	Larimer County, CO.	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	0.9946
	Broward County, FL.	
22900	Fort Smith, AR-OK	0.7697
	Crawford County, AR.	
	Franklin County, AR.	
	Sebastian County, AR.	
	Le Flore County, OK.	
	Sequoyah County, OK.	
23020	Fort Walton Beach-Crestview-Destin, FL	0.8769
	Okaloosa County, FL.	
23060	Fort Wayne, IN	0.9176
	Allen County, IN.	
	Wells County, IN.	
	Whitley County, IN.	
23104	Fort Worth-Arlington, TX	0.9709
	Johnson County, TX.	
	Parker County, TX.	
	Tarrant County, TX.	
	Wise County, TX.	
23420	Fresno, CA	1.1009
	Fresno County, CA.	
23460	Gadsden, AL	0.7983

CBSA code	Urban area (constituent counties)	Wage index
	Etowah County, AL.	
23540	Gainesville, FL	0.9312
	Alachua County, FL.	
	Gilchrist County, FL.	
23580	Gainesville, GA	0.9109
	Hall County, GA.	
23844	Gary, IN	0.9250
	Jasper County, IN.	
	Lake County, IN.	
	Newton County, IN.	
	Porter County, IN.	
24020	Glens Falls, NY	0.8473
	Warren County, NY.	
	Washington County, NY.	
24140	Goldsboro, NC	0.9143
	Wayne County, NC.	
24220	Grand Forks, ND–MN	0.7565
	Polk County, MN.	
	Grand Forks County, ND.	
24300	Grand Junction, CO	0.9812
	Mesa County, CO.	
24340	Grand Rapids-Wyoming, MI	0.9184
	Barry County, MI.	
	Ionia County, MI.	
	Kent County, MI.	
	Newaygo County, MI.	
24500	Great Falls, MT	0.8784
	Cascade County, MT.	
24540	Greeley, CO	0.9684
	Weld County, CO.	
24580	Green Bay, WI	0.9709
	Brown County, WI.	
	Kewaunee County, WI.	
	Oconto County, WI.	
24660	Greensboro-High Point, NC	0.9011
	Guilford County, NC.	
	Randolph County, NC.	
	Rockingham County, NC.	
24780	Greenville, NC	0.9448
	Greene County, NC.	
	Pitt County, NC.	
24860	Greenville, SC	0.9961
	Greenville County, SC.	
	Laurens County, SC.	
	Pickens County, SC.	
25020	Guayama, PR	0.3249
	Arroyo Municipio, PR.	
	Guayama Municipio, PR.	
	Patillas Municipio, PR.	
25060	Gulfport-Biloxi, MS	0.9029
	Hancock County, MS.	
	Harrison County, MS.	
	Stone County, MS.	
25180	Hagerstown-Martinsburg, MD-WV	0.8997
	Washington County, MD.	
	Berkeley County, WV.	
	Morgan County, WV.	
25260	Hanford-Corcoran, CA	1.0870
	Kings County, CA.	
25420	Harrisburg-Carlisle, PA	0.9153
	Cumberland County, PA.	
	Dauphin County, PA.	
	Perry County, PA.	
25500	Harrisonburg, VA	0.8894
	Rockingham County, VA.	
	Harrisonburg City, VA.	
25540	Hartford-West Hartford-East Hartford, CT	1.1069
	Hartford County, CT.	
	Litchfield County, CT.	
	Middlesex County, CT.	
	Tolland County, CT.	
25620	Hattiesburg, MS	0.7337
	Forrest County, MS.	

CBSA code	Urban area (constituent counties)	Wage index
	Lamar County, MS.	
	Perry County, MS.	
25860	Hickory-Lenoir-Morganton, NC	0.8976
	Alexander County, NC.	
	Burke County, NC.	
	Caldwell County, NC.	
	Catawba County, NC.	
25980 [1]	Hinesville-Fort Stewart, GA	0.9110
	Liberty County, GA.	
	Long County, GA.	
26100	Holland-Grand Haven, MI	0.9008
	Ottawa County, MI.	
26180	Honolulu, HI	1.1811
	Honolulu County, HI.	
26300	Hot Springs, AR	0.9113
	Garland County, AR.	
26380	Houma-Bayou Cane-Thibodaux, LA	0.7758
	Lafourche Parish, LA.	
	Terrebonne Parish, LA.	
26420	Houston-Baytown-Sugar Land, TX	0.9838
	Austin County, TX.	
	Brazoria County, TX.	
	Chambers County, TX.	
	Fort Bend County, TX.	
	Galveston County, TX.	
	Harris County, TX.	
	Liberty County, TX.	
	Montgomery County, TX.	
	San Jacinto County, TX.	
	Waller County, TX.	
26580	Huntington-Ashland, WV-KY-OH	0.9254
	Boyd County, KY.	
	Greenup County, KY.	
	Lawrence County, OH.	
	Cabell County, WV.	
	Wayne County, WV.	
26620	Huntsville, AL	0.9082
	Limestone County, AL.	
	Madison County, AL.	
26820	Idaho Falls, ID	0.9080
	Bonneville County, ID.	
	Jefferson County, ID.	
26900	Indianapolis, IN	0.9908
	Boone County, IN.	
	Brown County, IN.	
	Hamilton County, IN.	
	Hancock County, IN.	
	Hendricks County, IN.	
	Johnson County, IN.	
	Marion County, IN.	
	Morgan County, IN.	
	Putnam County, IN.	
	Shelby County, IN.	
26980	Iowa City, IA	0.9483
	Johnson County, IA.	
	Washington County, IA.	
27060	Ithaca, NY	0.9614
	Tompkins County, NY.	
27100	Jackson, MI	0.9309
	Jackson County, MI.	
27140	Jackson, MS	0.8067
	Copiah County, MS.	
	Hinds County, MS.	
	Madison County, MS.	
	Rankin County, MS.	
	Simpson County, MS.	
27180	Jackson, TN	0.8523
	Chester County, TN.	
	Madison County, TN.	
27260	Jacksonville, FL	0.8999
	Baker County, FL.	
	Clay County, FL.	
	Duval County, FL.	

CBSA code	Urban area (constituent counties)	Wage index
	Nassau County, FL.	
	St. Johns County, FL.	
27340	Jacksonville, NC	0.8177
	Onslow County, NC.	
27500	Janesville, WI	0.9662
	Rock County, WI.	
27620	Jefferson City, MO	0.8775
	Callaway County, MO.	
	Cole County, MO.	
	Moniteau County, MO.	
	Osage County, MO.	
27740	Johnson City, TN	0.7971
	Carter County, TN.	
	Unicoi County, TN.	
	Washington County, TN.	
27780	Johnstown, PA	0.7920
	Cambria County, PA.	
27860	Jonesboro, AR	0.7916
	Craighead County, AR.	
	Poinsett County, AR.	
27900	Joplin, MO	0.9406
	Jasper County, MO.	
	Newton County, MO.	
28020	Kalamazoo-Portage, MI	1.0801
	Kalamazoo County, MI.	
	Van Buren County, MI.	
28100	Kankakee-Bradley, IL	1.0485
	Kankakee County, IL.	
28140	Kansas City, MO-KS	0.9610
	Franklin County, KS.	
	Johnson County, KS.	
	Leavenworth County, KS.	
	Linn County, KS.	
	Miami County, KS.	
	Wyandotte County, KS.	
	Bates County, MO.	
	Caldwell County, MO.	
	Cass County, MO.	
	Clay County, MO.	
	Clinton County, MO.	
	Jackson County, MO.	
	Lafayette County, MO.	
	Platte County, MO.	
	Ray County, MO.	
28420	Kennewick-Richland-Pasco, WA	0.9911
	Benton County, WA.	
	Franklin County, WA.	
28660	Killeen-Temple-Fort Hood, TX	0.8765
	Bell County, TX.	
	Coryell County, TX.	
	Lampasas County, TX.	
28700	Kingsport-Bristol-Bristol, TN-VA	0.7743
	Hawkins County, TN.	
	Sullivan County, TN.	
	Bristol City, VA.	
	Scott County, VA.	
	Washington County, VA.	
28740	Kingston, NY	0.9375
	Ulster County, NY.	
28940	Knoxville, TN	0.7881
	Anderson County, TN.	
	Blount County, TN.	
	Knox County, TN.	
	Loudon County, TN.	
	Union County, TN.	
29020	Kokomo, IN	0.9349
	Howard County, IN.	
	Tipton County, IN.	
29100	La Crosse, WI–MN	0.9758
	Houston County, MN.	
	La Crosse County, WI.	
29140	Lafayette, IN	0.9221
	Benton County, IN.	

CBSA code	Urban area (constituent counties)	Wage index
	Carroll County, IN.	
	Tippecanoe County, IN.	
29180	Lafayette, LA	0.8374
	Lafayette Parish, LA.	
	St. Martin Parish, LA.	
29340	Lake Charles, LA	0.7556
	Calcasieu Parish, LA.	
	Cameron Parish, LA.	
29404	Lake County-Kenosha County, IL-WI	1.0389
	Lake County, IL.	
	Kenosha County, WI.	
29420	Lake Havasu City-Kingman, AZ	0.9797
29460	Lakeland, FL	0.8530
	Polk County, FL.	
29540	Lancaster, PA	0.9363
	Lancaster County, PA.	
29620	Lansing-East Lansing, MI	0.9931
	Clinton County, MI.	
	Eaton County, MI.	
	Ingham County, MI.	
29700	Laredo, TX	0.8366
	Webb County, TX.	
29740	Las Cruces, NM	0.8929
	Dona Ana County, NM.	
29820	Las Vegas-Paradise, NV	1.1971
	Clark County, NV.	
29940	Lawrence, KS	0.8343
	Douglas County, KS.	
30020	Lawton, OK	0.8211
	Comanche County, OK.	
30140	Lebanon, PA	0.8954
	Lebanon County, PA.	
30300	Lewiston, ID-WA	0.9465
	Nez Perce County, ID.	
	Asotin County, WA.	
30340	Lewiston-Auburn, ME	0.9200
	Androscoggin County, ME.	
30460	Lexington-Fayette, KY	0.9110
	Bourbon County, KY.	
	Clark County, KY.	
	Fayette County, KY.	
	Jessamine County, KY.	
	Scott County, KY.	
	Woodford County, KY.	
30620	Lima, OH	0.9427
	Allen County, OH.	
30700	Lincoln, NE	0.9759
	Lancaster County, NE.	
	Seward County, NE.	
30780	Little Rock-North Little Rock, AR	0.8672
	Faulkner County, AR.	
	Grant County, AR.	
	Lonoke County, AR.	
	Perry County, AR.	
	Pulaski County, AR.	
	Saline County, AR.	
30860	Logan, UT–ID	0.8765
	Franklin County, ID.	
	Cache County, UT.	
30980	Longview, TX	0.8370
	Gregg County, TX.	
	Rusk County, TX.	
	Upshur County, TX.	
31020	Longview, WA	1.1207
	Cowlitz County, WA.	
31084	Los Angeles-Long Beach-Glendale, CA	1.2208
	Los Angeles County, CA.	
31140	Louisville, KY-IN	0.9249
	Clark County, IN.	
	Floyd County, IN.	
	Harrison County, IN.	
	Washington County, IN.	
	Bullitt County, KY.	

CBSA code	Urban area (constituent counties)	Wage index
	Henry County, KY.	
	Jefferson County, KY.	
	Meade County, KY.	
	Nelson County, KY.	
	Oldham County, KY.	
	Shelby County, KY.	
	Spencer County, KY.	
	Trimble County, KY.	
31180	Lubbock, TX	0.8731
	Crosby County, TX.	
	Lubbock County, TX.	
31340	Lynchburg, VA	0.8774
	Amherst County, VA.	
	Appomattox County, VA.	
	Bedford County, VA.	
	Campbell County, VA.	
	Bedford City, VA.	
	Lynchburg City, VA.	
31420	Macon, GA	0.9570
	Bibb County, GA.	
	Crawford County, GA.	
	Jones County, GA.	
	Monroe County, GA.	
	Twiggs County, GA.	
31460	Madera, CA	0.7939
	Madera County, CA.	
31540	Madison, WI	1.0967
	Columbia County, WI.	
	Dane County, WI.	
	Iowa County, WI.	
31700	Manchester-Nashua, NH	1.0359
	Hillsborough County, NH.	
	Merrimack County, NH.	
31900	Mansfield, OH	0.9330
	Richland County, OH.	
32420	Mayagüez, PR	0.3940
	Hormigueros Municipio, PR.	
	Mayagüez Municipio, PR.	
32580	McAllen-Edinburg-Pharr, TX	0.9009
	Hidalgo County, TX.	
32780	Medford, OR	1.0244
	Jackson County, OR.	
32820	Memphis, TN-MS-AR	0.9232
	Crittenden County, AR.	
	DeSoto County, MS.	
	Marshall County, MS.	
	Tate County, MS.	
	Tunica County, MS.	
	Fayette County, TN.	
	Shelby County, TN.	
	Tipton County, TN.	
32900	Merced, CA	1.2243
	Merced County, CA.	
33124	Miami-Miami Beach-Kendall, FL	0.9830
	Miami-Dade County, FL.	
33140	Michigan City-La Porte, IN	0.9159
	LaPorte County, IN.	
33260	Midland, TX	0.9827
	Midland County, TX.	
33340	Milwaukee-Waukesha-West Allis, WI	1.0080
	Milwaukee County, WI.	
	Ozaukee County, WI.	
	Washington County, WI.	
	Waukesha County, WI.	
33460	Minneapolis-St. Paul-Bloomington, MN–WI	1.1150
	Anoka County, MN.	
	Carver County, MN.	
	Chisago County, MN.	
	Dakota County, MN.	
	Hennepin County, MN.	
	Isanti County, MN.	
	Ramsey County, MN.	
	Scott County, MN.	

CBSA code	Urban area (constituent counties)	Wage index
	Sherburne County, MN.	
	Washington County, MN.	
	Wright County, MN.	
	Pierce County, WI.	
	St. Croix County, WI.	
33540	Missoula, MT	0.8973
	Missoula County, MT.	
33660	Mobile, AL	0.7908
	Mobile County, AL.	
33700	Modesto, CA	1.2194
	Stanislaus County, CA.	
33740	Monroe, LA	0.7900
	Ouachita Parish, LA.	
	Union Parish, LA.	
33780	Monroe, MI	0.8941
	Monroe County, MI.	
33860	Montgomery, AL	0.8283
	Autauga County, AL.	
	Elmore County, AL.	
	Lowndes County, AL.	
	Montgomery County, AL.	
34060	Morgantown, WV	0.8528
	Monongalia County, WV.	
	Preston County, WV.	
34100	Morristown, TN	0.7254
	Grainger County, TN.	
	Hamblen County, TN.	
	Jefferson County, TN.	
34580	Mount Vernon-Anacortes, WA	1.0292
	Skagit County, WA.	
34620	Muncie, IN	0.8489
	Delaware County, IN.	
34740	Muskegon-Norton Shores, MI	1.0055
	Muskegon County, MI.	
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8652
	Horry County, SC.	
34900	Napa, CA	1.4520
	Napa County, CA.	
34940	Naples-Marco Island, FL	0.9672
	Collier County, FL.	
34980	Nashville-Davidson-Murfreesboro, TN	0.9504
	Cannon County, TN.	
	Cheatham County, TN.	
	Davidson County, TN.	
	Dickson County, TN.	
	Hickman County, TN.	
	Macon County, TN.	
	Robertson County, TN.	
	Rutherford County, TN.	
	Smith County, TN.	
	Sumner County, TN.	
	Trousdale County, TN.	
	Williamson County, TN.	
	Wilson County, TN.	
35004	Nassau-Suffolk, NY	1.2453
	Nassau County, NY.	
	Suffolk County, NY.	
35084	Newark-Union, NJ-PA	1.1731
	Essex County, NJ.	
	Hunterdon County, NJ.	
	Morris County, NJ.	
	Sussex County, NJ.	
	Union County, NJ.	
	Pike County, PA.	
35300	New Haven-Milford, CT	1.1742
	New Haven County, CT.	
35380	New Orleans-Metairie-Kenner, LA	0.9103
	Jefferson Parish, LA.	
	Orleans Parish, LA.	
	Plaquemines Parish, LA.	
	St. Bernard Parish, LA.	
	St. Charles Parish, LA.	
	St. John the Baptist Parish, LA.	

CBSA code	Urban area (constituent counties)	Wage index
	St. Tammany Parish, LA.	
35644	New York-Wayne-White Plains, NY-NJ	1.2885
	Bergen County, NJ.	
	Hudson County, NJ.	
	Passaic County, NJ.	
	Bronx County, NY.	
	Kings County, NY.	
	New York County, NY.	
	Putnam County, NY.	
	Queens County, NY.	
	Richmond County, NY.	
	Rockland County, NY.	
	Westchester County, NY.	
35660	Niles-Benton Harbor, MI	0.9066
	Berrien County, MI.	
35980	Norwich-New London, CT	1.1398
	New London County, CT.	
36084	Oakland-Fremont-Hayward, CA	1.6092
	Alameda County, CA.	
	Contra Costa County, CA.	
36100	Ocala, FL	0.8512
	Marion County, FL.	
36140	Ocean City, NJ	1.1496
	Cape May County, NJ.	
36220	Odessa, TX	0.9475
	Ector County, TX.	
36260	Ogden-Clearfield, UT	0.9153
	Davis County, UT.	
	Morgan County, UT.	
	Weber County, UT.	
36420	Oklahoma City, OK	0.8724
	Canadian County, OK.	
	Cleveland County, OK.	
	Grady County, OK.	
	Lincoln County, OK.	
	Logan County, OK.	
	McClain County, OK.	
	Oklahoma County, OK.	
36500	Olympia, WA	1.1537
	Thurston County, WA.	
36540	Omaha-Council Bluffs, NE-IA	0.9441
	Harrison County, IA.	
	Mills County, IA.	
	Pottawattamie County, IA.	
	Cass County, NE.	
	Douglas County, NE.	
	Sarpy County, NE.	
	Saunders County, NE.	
	Washington County, NE.	
36740	Orlando, FL	0.9111
	Lake County, FL.	
	Orange County, FL.	
	Osceola County, FL.	
	Seminole County, FL.	
36780	Oshkosh-Neenah, WI	0.9474
	Winnebago County, WI.	
36980	Owensboro, KY	0.8685
	Daviess County, KY.	
	Hancock County, KY.	
	McLean County, KY.	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1951
	Ventura County, CA.	
37340	Palm Bay-Melbourne-Titusville, FL	0.9332
	Brevard County, FL.	
37380	Palm Coast, FL	0.8963
	Flagler County, FL.	
37460	Panama City-Lynn Haven, FL	0.8360
	Bay County, FL.	
37620	Parkersburg-Marietta, WV–OH	0.7867
	Washington County, OH.	
	Pleasants County, WV.	
	Wirt County, WV.	
	Wood County, WV.	

CBSA code	Urban area (constituent counties)	Wage index
37700	Pascagoula, MS	0.8102
	George County, MS.	
	Jackson County, MS.	
37764	Peabody, MA	1.0747
	Essex County, MA.	
37860	Pensacola-Ferry Pass-Brent, FL	0.8242
	Escambia County, FL.	
	Santa Rosa County, FL.	
37900	Peoria, IL	0.9038
	Marshall County, IL.	
	Peoria County, IL.	
	Stark County, IL.	
	Tazewell County, IL.	
	Woodford County, IL.	
37964	Philadelphia, PA	1.0979
	Bucks County, PA.	
	Chester County, PA.	
	Delaware County, PA.	
	Montgomery County, PA.	
	Philadelphia County, PA.	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0379
	Maricopa County, AZ.	
	Pinal County, AZ.	
38220	Pine Bluff, AR	0.7926
	Cleveland County, AR.	
	Jefferson County, AR.	
	Lincoln County, AR.	
38300	Pittsburgh, PA	0.8678
	Allegheny County, PA.	
	Armstrong County, PA.	
	Beaver County, PA.	
	Butler County, PA.	
	Fayette County, PA.	
	Washington County, PA.	
	Westmoreland County, PA.	
38340	Pittsfield, MA	1.0445
	Berkshire County, MA.	
38540	Pocatello, ID	0.9343
	Bannock County, ID.	
	Power County, ID.	
38660	Ponce, PR	0.4289
	Juana Díaz Municipio, PR.	
	Ponce Municipio, PR.	
	Villalba Municipio, PR.	
38860	Portland-South Portland-Biddeford, ME	0.9942
	Cumberland County, ME.	
	Sagadahoc County, ME.	
	York County, ME.	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1456
	Clackamas County, OR.	
	Columbia County, OR.	
	Multnomah County, OR.	
	Washington County, OR.	
	Yamhill County, OR.	
	Clark County, WA.	
	Skamania County, WA.	
38940	Port St. Lucie-Fort Pierce, FL	0.9870
	Martin County, FL.	
	St. Lucie County, FL.	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0920
	Dutchess County, NY.	
	Orange County, NY.	
39140	Prescott, AZ	1.0221
	Yavapai County, AZ.	
39300	Providence-New Bedford-Fall River, RI-MA	1.0696
	Bristol County, MA.	
	Bristol County, RI.	
	Kent County, RI.	
	Newport County, RI.	
	Providence County, RI.	
	Washington County, RI.	
39340	Provo-Orem, UT	0.9381
	Juab County, UT.	

CBSA code	Urban area (constituent counties)	Wage index
	Utah County, UT.	
39380	Pueblo, CO	0.8713
	Pueblo County, CO.	
39460	Punta Gorda, FL	0.8976
	Charlotte County, FL.	
39540	Racine, WI	0.9054
	Racine County, WI.	
39580	Raleigh-Cary, NC	0.9817
	Franklin County, NC.	
	Johnston County, NC.	
	Wake County, NC.	
39660	Rapid City, SD	0.9598
	Meade County, SD.	
	Pennington County, SD.	
39740	Reading, PA	0.9242
	Berks County, PA.	
39820	Redding, CA	1.3731
	Shasta County, CA.	
39900	Reno-Sparks, NV	1.0317
	Storey County, NV.	
	Washoe County, NV.	
40060	Richmond, VA	0.9363
	Amelia County, VA.	
	Caroline County, VA.	
	Charles City County, VA.	
	Chesterfield County, VA.	
	Cumberland County, VA.	
	Dinwiddie County, VA.	
	Goochland County, VA.	
	Hanover County, VA.	
	Henrico County, VA.	
	King and Queen County, VA.	
	King William County, VA.	
	Louisa County, VA.	
	New Kent County, VA.	
	Powhatan County, VA.	
	Prince George County, VA.	
	Sussex County, VA.	
	Colonial Heights City, VA.	
	Hopewell City, VA.	
	Petersburg City, VA.	
	Richmond City, VA.	
40140	Riverside-San Bernardino-Ontario, CA	1.1468
	Riverside County, CA.	
	San Bernardino County, CA.	
40220	Roanoke, VA	0.8660
	Botetourt County, VA.	
	Craig County, VA.	
	Franklin County, VA.	
	Roanoke County, VA.	
	Roanoke City, VA.	
	Salem City, VA.	
40340	Rochester, MN	1.1214
	Dodge County, MN.	
	Olmsted County, MN.	
	Wabasha County, MN.	
40380	Rochester, NY	0.8811
	Livingston County, NY.	
	Monroe County, NY.	
	Ontario County, NY.	
	Orleans County, NY.	
	Wayne County, NY.	
40420	Rockford, IL	0.9835
	Boone County, IL.	
	Winnebago County, IL.	
40484	Rockingham County-Strafford County, NH	0.9926
	Rockingham County, NH.	
	Strafford County, NH.	
40580	Rocky Mount, NC	0.9031
	Edgecombe County, NC.	
	Nash County, NC.	
40660	Rome, GA	0.9134
	Floyd County, GA.	

CBSA code	Urban area (constituent counties)	Wage index
40900	Sacramento—Arden-Arcade—Roseville, CA	1.3572
	El Dorado County, CA.	
	Placer County, CA.	
	Sacramento County, CA.	
	Yolo County, CA.	
40980	Saginaw-Saginaw Township North, MI	0.8702
	Saginaw County, MI.	
41060	St. Cloud, MN	1.0976
	Benton County, MN.	
	Stearns County, MN.	
41100	St. George, UT	0.9021
	Washington County, UT.	
41140	St. Joseph, MO–KS	1.0380
	Doniphan County, KS.	
	Andrew County, MO.	
	Buchanan County, MO.	
	DeKalb County, MO.	
41180	St. Louis, MO-IL	0.9006
	Bond County, IL.	
	Calhoun County, IL.	
	Clinton County, IL.	
	Jersey County, IL.	
	Macoupin County, IL.	
	Madison County, IL.	
	Monroe County, IL.	
	St. Clair County, IL.	
	Crawford County, MO.	
	Franklin County, MO.	
	Jefferson County, MO.	
	Lincoln County, MO.	
	St. Charles County, MO.	
	St. Louis County, MO.	
	Warren County, MO.	
	Washington County, MO.	
	St. Louis City, MO.	
41420	Salem, OR	1.0884
	Marion County, OR.	
	Polk County, OR.	
41500	Salinas, CA	1.4987
	Monterey County, CA.	
41540	Salisbury, MD	0.9246
	Somerset County, MD.	
	Wicomico County, MD.	
41620	Salt Lake City, UT	0.9158
	Salt Lake County, UT.	
	Summit County, UT.	
	Tooele County, UT.	
41660	San Angelo, TX	0.8424
	Irion County, TX.	
	Tom Green County, TX.	
41700	San Antonio, TX	0.8856
	Atascosa County, TX.	
	Bandera County, TX.	
	Bexar County, TX.	
	Comal County, TX.	
	Guadalupe County, TX.	
	Kendall County, TX.	
	Medina County, TX.	
	Wilson County, TX.	
41740	San Diego-Carlsbad-San Marcos, CA	1.1538
	San Diego County, CA.	
41780	Sandusky, OH	0.8870
	Erie County, OH.	
41884	San Francisco-San Mateo-Redwood City, CA	1.5529
	Marin County, CA.	
	San Francisco County, CA.	
	San Mateo County, CA.	
41900	San Germán-Cabo Rojo, PR	0.4756
	Cabo Rojo Municipio, PR.	
	Lajas Municipio, PR.	
	Sabana Grande Municipio, PR.	
	San Germán Municipio, PR.	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.6141

CBSA code	Urban area (constituent counties)	Wage index
	San Benito County, CA.	
	Santa Clara County, CA.	
41980	San Juan-Caguas-Guaynabo, PR	0.4393
	Aguas Buenas Municipio, PR.	
	Aibonito Municipio, PR.	
	Arecibo Municipio, PR.	
	Barceloneta Municipio, PR.	
	Barranquitas Municipio, PR.	
	Bayamón Municipio, PR.	
	Caguas Municipio, PR.	
	Camuy Municipio, PR.	
	Canóvanas Municipio, PR.	
	Carolina Municipio, PR.	
	Cataño Municipio, PR.	
	Cayey Municipio, PR.	
	Ciales Municipio, PR.	
	Cidra Municipio, PR.	
	Comerío Municipio, PR.	
	Corozal Municipio, PR.	
	Dorado Municipio, PR.	
	Florida Municipio, PR.	
	Guaynabo Municipio, PR.	
	Gurabo Municipio, PR.	
	Hatillo Municipio, PR.	
	Humacao Municipio, PR.	
	Juncos Municipio, PR.	
	Las Piedras Municipio, PR.	
	Loíza Municipio, PR.	
	Manatí Municipio, PR.	
	Maunabo Municipio, PR.	
	Morovis Municipio, PR.	
	Naguabo Municipio, PR.	
	Naranjito Municipio, PR.	
	Orocovis Municipio, PR.	
	Quebradillas Municipio, PR.	
	Río Grande Municipio, PR.	
	San Juan Municipio, PR.	
	San Lorenzo Municipio, PR.	
	Toa Alta Municipio, PR.	
	Toa Baja Municipio, PR.	
	Trujillo Alto Municipio, PR.	
	Vega Alta Municipio, PR.	
	Vega Baja Municipio, PR.	
	Yabucoa Municipio, PR.	
42020	San Luis Obispo-Paso Robles, CA	1.2441
	San Luis Obispo County, CA.	
42044	Santa Ana-Anaheim-Irvine, CA	1.1993
	Orange County, CA.	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.1909
	Santa Barbara County, CA.	
42100	Santa Cruz-Watsonville, CA	1.6429
	Santa Cruz County, CA.	
42140	Santa Fe, NM	1.0610
	Santa Fe County, NM.	
42220	Santa Rosa-Petaluma, CA	1.5528
	Sonoma County, CA.	
42340	Savannah, GA	0.9152
	Bryan County, GA.	
	Chatham County, GA.	
	Effingham County, GA.	
42540	Scranton—Wilkes-Barre, PA	0.8333
	Lackawanna County, PA.	
	Luzerne County, PA.	
	Wyoming County, PA.	
42644	Seattle-Bellevue-Everett, WA	1.1755
	King County, WA.	
	Snohomish County, WA.	
42680	Sebastian-Vero Beach, FL	0.9217
43100	Sheboygan, WI	0.8920
	Sheboygan County, WI.	
43300	Sherman-Denison, TX	0.9024
	Grayson County, TX.	
43340	Shreveport-Bossier City, LA	0.8442

CBSA code	Urban area (constituent counties)	Wage index
	Bossier Parish, LA.	
	Caddo Parish, LA.	
	De Soto Parish, LA.	
43580	Sioux City, IA-NE-SD	0.8915
	Woodbury County, IA.	
	Dakota County, NE.	
	Dixon County, NE.	
	Union County, SD.	
43620	Sioux Falls, SD	0.9354
	Lincoln County, SD.	
	McCook County, SD.	
	Minnehaha County, SD.	
	Turner County, SD.	
43780	South Bend-Mishawaka, IN–MI	0.9761
	St. Joseph County, IN.	
	Cass County, MI.	
43900	Spartanburg, SC	0.9025
	Spartanburg County, SC.	
44060	Spokane, WA	1.0559
	Spokane County, WA.	
44100	Springfield, IL	0.9102
	Menard County, IL.	
	Sangamon County, IL.	
44140	Springfield, MA	1.0405
	Franklin County, MA.	
	Hampden County, MA.	
	Hampshire County, MA.	
44180	Springfield, MO	0.8424
	Christian County, MO.	
	Dallas County, MO.	
	Greene County, MO.	
	Polk County, MO.	
	Webster County, MO.	
44220	Springfield, OH	0.8876
	Clark County, OH.	
44300	State College, PA	0.8937
	Centre County, PA.	
44700	Stockton, CA	1.2015
	San Joaquin County, CA.	
44940	Sumter, SC	0.8257
	Sumter County, SC.	
45060	Syracuse, NY	0.9787
	Madison County, NY.	
	Onondaga County, NY.	
	Oswego County, NY.	
45104	Tacoma, WA	1.1241
	Pierce County, WA.	
45220	Tallahassee, FL	0.8964
	Gadsden County, FL.	
	Jefferson County, FL.	
	Leon County, FL.	
	Wakulla County, FL.	
45300	Tampa-St. Petersburg-Clearwater, FL	0.8852
	Hernando County, FL.	
	Hillsborough County, FL.	
	Pasco County, FL.	
	Pinellas County, FL.	
45460	Terre Haute, IN	0.9085
	Clay County, IN.	
	Sullivan County, IN.	
	Vermillion County, IN.	
	Vigo County, IN.	
45500	Texarkana, TX-Texarkana, AR	0.8144
	Miller County, AR.	
	Bowie County, TX.	
45780	Toledo, OH	0.9407
	Fulton County, OH.	
	Lucas County, OH.	
	Ottawa County, OH.	
	Wood County, OH.	
45820	Topeka, KS	0.8756
	Jackson County, KS.	
	Jefferson County, KS.	

CBSA code	Urban area (constituent counties)	Wage index
	Osage County, KS.	
	Shawnee County, KS.	
	Wabaunsee County, KS.	
45940	Trenton-Ewing, NJ	1.0604
	Mercer County, NJ.	
46060	Tucson, AZ	0.9229
	Pima County, AZ.	
46140	Tulsa, OK	0.8445
	Creek County, OK.	
	Okmulgee County, OK.	
	Osage County, OK.	
	Pawnee County, OK.	
	Rogers County, OK.	
	Tulsa County, OK.	
	Wagoner County, OK.	
46220	Tuscaloosa, AL	0.8496
	Greene County, AL.	
	Hale County, AL.	
	Tuscaloosa County, AL.	
46340	Tyler, TX	0.8804
	Smith County, TX.	
46540	Utica-Rome, NY	0.8404
	Herkimer County, NY.	
	Oneida County, NY.	
46660	Valdosta, GA	0.8027
	Brooks County, GA.	
	Echols County, GA.	
	Lanier County, GA.	
	Lowndes County, GA.	
46700	Vallejo-Fairfield, CA	1.4359
	Solano County, CA.	
47020	Victoria, TX	0.8124
	Calhoun County, TX.	
	Goliad County, TX.	
	Victoria County, TX.	
47220	Vineland-Millville-Bridgeton, NJ	1.0366
	Cumberland County, NJ.	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8884
	Currituck County, NC.	
	Gloucester County, VA.	
	Isle of Wight County, VA.	
	James City County, VA.	
	Mathews County, VA.	
	Surry County, VA.	
	York County, VA.	
	Chesapeake City, VA.	
	Hampton City, VA.	
	Newport News City, VA.	
	Norfolk City, VA.	
	Poquoson City, VA.	
	Portsmouth City, VA.	
	Suffolk City, VA.	
	Virginia Beach City, VA.	
	Williamsburg City, VA.	
47300	Visalia-Porterville, CA	1.0144
	Tulare County, CA.	
47380	Waco, TX	0.8596
	McLennan County, TX.	
47580	Warner Robins, GA	0.8989
	Houston County, GA.	
47644	Warren-Farmington Hills-Troy, MI	0.9904
	Lapeer County, MI.	
	Livingston County, MI.	
	Macomb County, MI.	
	Oakland County, MI.	
	St. Clair County, MI.	
47894	Washington-Arlington-Alexandria, DC–VA–MD–WV	1.0827
	District of Columbia, DC.	
	Calvert County, MD.	
	Charles County, MD.	
	Prince George's County, MD.	
	Arlington County, VA.	
	Clarke County, VA.	

CBSA code	Urban area (constituent counties)	Wage index
	Fairfax County, VA.	
	Fauquier County, VA.	
	Loudoun County, VA.	
	Prince William County, VA.	
	Spotsylvania County, VA.	
	Stafford County, VA.	
	Warren County, VA.	
	Alexandria City, VA.	
	Fairfax City, VA.	
	Falls Church City, VA.	
	Fredericksburg City, VA.	
	Manassas City, VA.	
	Manassas Park City, VA.	
	Jefferson County, WV.	
47940	Waterloo-Cedar Falls, IA	0.8490
	Black Hawk County, IA.	
	Bremer County, IA.	
	Grundy County, IA.	
48140	Wausau, WI	0.9615
	Marathon County, WI.	
48260	Weirton-Steubenville, WV–OH	0.8079
	Jefferson County, OH.	
	Brooke County, WV.	
	Hancock County, WV.	
48300	Wenatchee, WA	0.9544
	Chelan County, WA.	
	Douglas County, WA.	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9757
	Palm Beach County, FL.	
48540	Wheeling, WV–OH	0.6955
	Belmont County, OH.	
	Marshall County, WV.	
	Ohio County, WV.	
48620	Wichita, KS	0.9069
	Butler County, KS.	
	Harvey County, KS.	
	Sedgwick County, KS.	
	Sumner County, KS.	
48660	Wichita Falls, TX	0.8832
	Archer County, TX.	
	Clay County, TX.	
	Wichita County, TX.	
48700	Williamsport, PA	0.8096
	Lycoming County, PA.	
48864	Wilmington, DE–MD–NJ	1.0696
	New Castle County, DE.	
	Cecil County, MD.	
	Salem County, NJ.	
48900	Wilmington, NC	0.9089
	Brunswick County, NC.	
	New Hanover County, NC.	
	Pender County, NC.	
49020	Winchester, VA–WV	0.9801
	Frederick County, VA.	
	Winchester City, VA.	
	Hampshire County, WV.	
49180	Winston-Salem, NC	0.9016
	Davie County, NC.	
	Forsyth County, NC.	
	Stokes County, NC.	
	Yadkin County, NC.	
49340	Worcester, MA	1.0836
	Worcester County, MA.	
49420	Yakima, WA	0.9948
	Yakima County, WA.	
49500	Yauco, PR	0.3432
	Guánica Municipio, PR.	
	Guayanilla Municipio, PR.	
	Peñuelas Municipio, PR.	
	Yauco Municipio, PR.	
49620	York-Hanover, PA	0.9518
	York County, PA.	
49660	Youngstown-Warren-Boardman, OH–PA	0.8915

CBSA code	Urban area (constituent counties)	Wage index
	Mahoning County, OH.	
	Trumbull County, OH.	
	Mercer County, PA.	
49700	Yuba City, CA	1.1137
	Sutter County, CA.	
	Yuba County, CA.	
49740	Yuma, AZ	0.9281
	Yuma County, AZ.	

[1] At this time, there are no hospitals in these urban areas on which to base a wage index. Therefore, the urban wage index value is based on the average wage index of all urban areas within the State.

[FR Doc. E8–26142 Filed 10–30–08; 4:15 pm]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0572]

Agency Emergency Processing Under Office of Management and Budget Review; Implementation of the Animal Generic Drug User Fee Act of 2008; User Fee Cover Sheet Form FDA 3728

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns the burden hours required for the Animal Generic Drug User Fee Cover Sheet, Form FDA 3728 and the timeframe requirement under the Animal Generic Drug User Fee Act of 2008 (AGDUFA) (21 U.S.C. 379j–21) for implementing the new user fee cover sheet Form FDA 3728.

DATES: Fax written comments on the collection of information by November 10, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and ''Implementation of the Animal Generic Drug User Fee Act of 2008 (21 U.S.C. 379j–21(a)); User Fee Cover Sheet Form 3728; Emergency Request.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: FDA is requesting emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). The Federal Food, Drug, and Cosmetic Act (the act), as amended by AGDUFA authorizes FDA to collect user fees: (1) For certain abbreviated applications for a generic new animal drug, (2) on certain generic new animal drug products, and (3) on certain sponsors of such abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Implementation of the Animal Generic Drug User Fee Act of 2008; User Fee Cover Sheet Form FDA 3728 (21 U.S.C. 379j–21); Emergency Request

Section 741 of the act (21 U.S.C. 379j–21), establishes three different kinds of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs, (2) annual fees for certain generic new animal drug products, and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs. Because the submission of user fees concurrently with applications is required, the review of an application cannot begin until the fee is submitted. Form FDA 3728, the Animal Generic Drug User Fee Cover Sheet, is designed to provide the minimum necessary information in order to: (1) Determine whether a fee is required for review of an application, (2) determine the amount of fee required, and (3) account for and track user fees.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 U.S.C. 379j–21.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Form FDA 3728	20	2	40	.08	3.2

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to this collection of information are generic new animal drug applicants. Based on FDA's data base system, there are an estimated 20 sponsors of new animal drugs potentially subject to AGDUFA. The

annual reporting burden estimates in table 1 of this document are based on FDA's previous experience.

Dated: October 29, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–26162 Filed 10–31–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0565]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in the guidance for industry on formal dispute resolution.

DATES: Submit written or electronic comments on the collection of information by January 2, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level (OMB Control Number 0910–0430)—Extension

This information collection approval request is for an FDA guidance on the process for formally resolving scientific and procedural disputes in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) that cannot be resolved at the division level. The guidance describes procedures for formally appealing such disputes to the office or center level and for submitting information to assist center officials in resolving the issue(s) presented. The guidance provides information on how the agency will interpret and apply provisions of the existing regulations regarding internal agency review of decisions (§ 10.75) and dispute resolution during the investigational new drug (IND) process (§ 312.48) and the new drug application/abbreviated new drug application (NDA/ANDA) process (§ 314.103). In addition, the guidance provides information on how the agency will interpret and apply the specific Prescription Drug User Fee Act (PDUFA) goals for major dispute resolution associated with the development and review of PDUFA products.

Existing regulations, which appear primarily in parts 10, 312, and 314 (21 CFR parts 10, 312, and 314), establish procedures for the resolution of scientific and procedural disputes between interested persons and the agency, CDER, and CBER. All agency decisions on such matters are based on information in the administrative file (§ 10.75(d)). In general, the information in an administrative file is collected under existing regulations in parts 312 (OMB Control No. 0910–0014), 314 (OMB Control No. 0910–0001), and part 601 (21 CFR part 601) (OMB Control No. 0910–0338), which specify the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of drugs and biological products. This information is usually submitted as part of an IND, NDA, or biologics license application (BLA), or as a supplement to an approved application. While FDA already possesses in the administrative file the information that would form the basis of a decision on a matter in dispute resolution, the submission of particular information regarding the request itself and the data and information relied on by the requestor in the appeal would facilitate timely resolution of the dispute. The guidance describes the following collection of information not expressly specified under existing regulations: The submission of the request for dispute resolution as an amendment to the application for the underlying product, including the submission of supporting information with the request for dispute resolution.

Agency regulations (§§ 312.23(11)(d), 314.50, 314.94, and 601.2) state that information provided to the agency as part of an IND, NDA, ANDA, or BLA is to be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs, ANDAs, and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571 - OMB Control No. 0910–0014, and FDA Form 356h - OMB Control No. 0910–0338.

In the guidance document, CDER and CBER ask that a request for formal dispute resolution be submitted as an amendment to the application for the underlying product and that it be

submitted to the agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted as an amendment in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the appropriate agency official to monitor progress on the resolution of the dispute and to ensure that appropriate steps will be taken in a timely manner.

CDER and CBER have determined and the guidance recommends that the following information should be submitted to the appropriate center with each request for dispute resolution so that the Center may quickly and efficiently respond to the request: (1) A brief but comprehensive statement of each issue to be resolved, including a description of the issue; the nature of the issue (i.e., scientific, procedural, or both); possible solutions based on information in the administrative file; whether informal dispute resolution was sought prior to the formal appeal; whether advisory committee review is sought; and the expected outcome; (2) a statement identifying the review division/office that issued the original decision on the matter and, if applicable, the last agency official that attempted to formally resolve the matter; (3) a list of documents in the administrative file, or additional copies of such documents, that are deemed necessary for resolution of the issue(s); and (4) a statement that the previous supervisory level has already had the opportunity to review all of the material relied on for dispute resolution. The information that the agency suggests submitting with a formal request for dispute resolution consists of: (1) Statements describing the issue from the perspective of the person with a dispute, (2) brief statements describing the history of the matter, and (3) the documents previously submitted to FDA under an OMB approved collection of information.

Based on FDA's experience with dispute resolution, the agency expects that most persons seeking formal dispute resolution will have gathered the materials listed previously when identifying the existence of a dispute with the agency. Consequently, FDA anticipates that the collection of information attributed solely to the guidance will be minimal.

Description of Respondents: A sponsor, applicant, or manufacturer of a drug or biological product regulated by the agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act who requests formal resolution of a scientific or procedural dispute.

Burden Estimate: Provided in table 1 of this document is an estimate of the annual reporting burden for requests for dispute resolution. Based on data collected from review divisions and offices within CDER and CBER, FDA estimates that approximately 13 sponsors and applicants (respondents) submit requests for formal dispute resolution to CDER annually and approximately 1 respondent submits requests for formal dispute resolution to CBER annually. The total annual responses are the total number of requests submitted to CDER and CBER in 1 year, including requests for dispute resolution that a single respondent submits more than one time. FDA estimates that CDER receives approximately 22 requests annually and CBER receives approximately 1 request annually. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for formal dispute resolution in accordance with the guidance, including the time it takes to gather and copy brief statements describing the issue from the perspective of the person with the dispute, brief statements describing the history of the matter, and supporting information that has already been submitted to the agency. Based on experience, FDA estimates that approximately 8 hours on average would be needed per response. Therefore, FDA estimates that 184 hours will be spent per year by respondents requesting formal dispute resolution under the guidance.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Requests for Formal Dispute Resolution	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours Per Response	Total Hours
CDER	13	1.7	22	8	176
CBER	1	1	1	8	8
Total					184

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: October 23, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–26095 Filed 10–31–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee

of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 20, 2008, from 1 p.m. to approximately 4 p.m.

Location: National Institutes of Health, Building 29B, Conference Room C. This meeting will be held by teleconference. The public is welcome to attend the meeting at the specified location where a speakerphone will be provided. Public participation in the meeting is limited to the use of the speakerphone in the conference room. Important information about transportation and directions to the NIH campus, parking, and security procedures is available on the Internet at *http://www.nih.gov/about/visitor/index.htm*. Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm*. Due to the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike. Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 20, 2008, the Committee will meet in open session to hear updates of the research program in the Laboratory of DNA Viruses, Division of Viral Products, Center for Biologics Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: On November 20, 2008, from 1 p.m. to approximately 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 13, 2008. Oral presentations from the public will be scheduled between approximately 2:30 p.m. and 3:30 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 5, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 6, 2008.

Closed Committee Deliberations: On November 20, 2008, from approximately 3:30 p.m. to 4 p.m. the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the report of the intramural research program and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Dated: October 21, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–26139 Filed 10–31–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Follow-Up of Kidney Cancer Patients From the Central European Multicenter Case-Control Study

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Follow-up of Kidney Cancer Patients from the Central European Multicenter Case-Control Study. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of this questionnaire is to obtain information on the 5-year survival status of kidney cancer patients that were enrolled in a Central European Case-Control Study of Kidney Cancer that was conducted between 2001–2004. The aim is to assess survival, the prevalence of recurrent disease and progression, and to investigate patient, tumor and genetic determinants of survival among cases. The questionnaire will collect information on patient related factors, tumor related factors not collected during the initial study, and the type of treatment(s) received since the patients were last contacted for the case-control study. This questionnaire adheres to The Public Health Service Act, section 412 (42 U.S.C. 285a–1) and section 413 (42 U.S.C. 285a–2), which authorizes the Division of Cancer Epidemiology and Genetics of the National Cancer Institute (NCI) to establish and support programs for the detection, diagnosis, prevention and treatment of cancer; and to collect, identify, analyze and disseminate information on cancer research, diagnosis, prevention and

treatment. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* Individuals that had previously participated in the Central European Renal Cancer Case-Control Study between 2001–2004 and physician abstractors. The estimated total annual burden hours requested is 296. The annualized cost to respondents is estimated at $5174. There are no additional capital costs, operating costs, and/or maintenance costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Patients	200	1	40/60	133.33
Families (NOK)	240	1	40/60	160.00
Physicians	10	1	15/60	2.50
Totals	450			295.83

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Lee E. Moore, PhD, MPH, Investigator/Epidemiologist, Occupational and Environmental Epidemiology Branch, Division of Cancer Epidemiology and Genetics, National Cancer Institute, NIH, DHHS, Executive Plaza South, Room 8102, 6120 Executive Blvd., EPS–MSC 7240, Bethesda, MD 20892–7270 or call non-toll-free number 301–496–6427 or e-mail your request, including your address to: *moorele@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 24, 2008.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison Office, National Institutes of Health.

[FR Doc. E8–26086 Filed 10–31–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of KNOD and NAME Member Conflicts.

Date: November 20, 2008.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elisabeth Koss, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–1721, *kosse@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Shared Instrumentation.

Date: November 20–21, 2008.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Balasundaram, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group AIDS Molecular and Cellular Biology Study Section.

Date: November 24, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Kenneth A. Roebuck, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Aging Program Project Review.

Date: November 24–25, 2008.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive,, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1126, MSC 7846, Bethesda, MD 20892, (301) 435–1121, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel A–START Applications.

Date: November 25–26, 2008.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Developmental Pharmacology.

Date: December 8, 2008.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Janet M. Larkin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 310–435–1026, *larkinjacsr@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26103 Filed 10–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Projects in Lung Failure.

Date: November 24, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Chang Sook Kim, PhD, Scientific Review Officer, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892, 301–435–0287, *carolko@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26098 Filed 10–31–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2009 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Grant to the Community Anti-Drug Coalitions of America (CADCA).

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately $625,000 (total costs) per year for up to five years to the Community Anti-Drug Coalitions of America (CADCA). This is not a formal request for applications. Assistance will be provided only to the Community Anti-Drug Coalitions of America (CADCA) based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: SP–09–004.

Catalog Of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Sections 509, 516 and 520A of the Public Health Service Act, as amended.

Justification: Only the Community Anti-Drug Coalitions of America (CADCA) is eligible to apply. The Substance Abuse and Mental Health Services Administration (SAMHSA) is seeking to award a single source grant to the Community Anti-Drug Coalitions of America (CADCA) to leverage existing resources and conference support to expand SAMHSA's scope and capacity to provide training and technical assistance to a large number of community leaders across the country who are committed to substance abuse prevention, substance abuse/addiction treatment and recovery support, and substance abuse/addiction-related mental health issues.

The Community Anti-Drug Coalitions of America (CADCA) is uniquely qualified to carry out the activities of this program because the purpose of the program is to partner with a national organization that has special expertise and unique broad, national-level experience in working with community anti-drug coalitions. CADCA is the only national organization that annually provides training and technical assistance through a national leadership conference for thousands of members of community coalitions dedicated to preventing substance abuse. CADCA currently is the sole organization that plays a major role in helping to strengthen and develop the nation's prevention infrastructure of anti-drug coalitions in support of on-going activities funded by SAMHSA's priority grant programs including: the Substance Abuse Prevention and Treatment Block Grant, the Strategic Prevention Framework State Incentive Grant, and the Drug Free Communities Support Program. CADCA is the only identified organization that currently meets this experience level and national reach to over 5,000 identified anti-drug coalitions across the country. CADCA has long been recognized in communities as well as States throughout the nation as the national voice for the advocacy and technical support of anti-drug coalitions. As such, it is uniquely qualified and positioned to carry out the requirements of this announcement.

Contact: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1081, Rockville, MD 20857; telephone: (240) 276–2321; E-mail: *shelly.hara@samhsa.hhs.gov.*

Toian Vaughn,

SAMHSA Committee Management Officer.

[FR Doc. E8–26102 Filed 10–31–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Revision of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection for Review; I–352, Immigration Bond; OMB Control No. 1653–0022.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will be submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 2, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Lee Shirkey, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024.

Comments are encouraged and will be accepted for sixty days until January 2, 2009. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of currently approved information collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–352, U.S. Immigration and Customs Enforcement.

1. Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual or households and businesses. The data collected on this collection instrument is used by U.S. Immigration and Customs Enforcement to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The collection instrument serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of bond. Sureties will have the capability of accessing, completing and submitting a bond electronically through ICE's eBonds initiative which encompasses the I–352, while individuals will still be required to complete the bond manually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Lee Shirkey, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024.

Dated: *October 28, 2008.*

Lee Shirkey,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E8–26123 Filed 10–31–08; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Public Meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on November 18–19, 2008 is to convene the full Advisory Committee and to discuss implementation of action items outlined in the 2008–2012 National Invasive Species Management Plan, which was finalized on August 1, 2008.

DATES: Meeting of the Invasive Species Advisory Committee: Tuesday, November 18 through Wednesday, November 19, 2008; beginning at approximately 8 a.m., and ending at approximately 5 p.m. each day. General Session on both days will be held in the Chesapeake Room.

ADDRESSES: Sheraton Inner Harbor, 300 South Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Analyst and ISAC Coordinator, (202) 513–7243; *Fax:* (202) 371–1751.

Dated: October 3, 2008.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. E8–26132 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0283; 40135–8451–0000–P1]

Center Point Energy (CPE), Right-of-Way Permit Application To Cross Cache River National Wildlife Refuge, Jackson County, AR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application for a natural gas pipeline Right-of-Way.

SUMMARY: The U.S. Fish and Wildlife Service is soliciting public comment on a Right-of-Way (ROW) permit application submitted by Center Point Energy (CPE) to install a 4-inch natural gas pipeline in a 10-feet wide by 850-feet wide right-of-way across a portion of the Cache River National Wildlife Refuge in Jackson County, Arkansas. Installation of the gas pipeline will require the issuance of a ROW permit.

DATE: Interested persons desiring to comment on this application must do so by December 3, 2008. We will consider public comments received or postmarked by that date.

ADDRESSES: Comments or requests for additional information should be addressed to Ms. Angela Thompson, U.S. Fish and Wildlife Service (Realty), 1875 Century Boulevard, Suite 420, Atlanta, Georgia 30345, telephone 404–679–7200; fax 404–679–7273 or e-mail to: *angela_thompson@fws.gov*.

FOR FURTHER INFORMATION CONTACT: For copies of documents and to ask project questions, see ''Document Availability.''

SUPPLEMENTARY INFORMATION:

A. Background

The Arkansas Highway and Transportation Department is replacing an unsafe wooden bridge on County Road 51, Jackson County, Arkansas. The proposed right-of-way will require realignment of a 762-foot section of a 4-inch natural gas pipeline that runs beneath the eastern edge of the wooden bridge on County Road 51. To install the pipeline, CPE will utilize horizontal directional drilling to cross a section of the Refuge and the Cache River. The entry and exit pits will be located in the gravel roadbed; the northern pit will be 50 feet from the northern end of the bridge and the southern pit will be 120 feet from the southern end of the bridge. The new alignment will run along the east side of the new bridge and 24 feet from the centerline of the existing road. The new pipeline right-of-way will run 4 feet below the riverbed, and across a strip of land lying in Jackson County, in the State of Arkansas.

B. Document Availability

Pursuant to the National Environmental Policy Act of 1969 (NEPA), the U.S. Fish and Wildlife Service prepared a Categorical Exclusion (CX), Environmental Action Statement (EAS) and was a cooperator in preparation of a Final Environmental Impact Statement (EIS) by the Federal Energy Regulatory Commission (FERC) assessing the impacts of constructing and operating the proposed natural gas pipeline. A copy of the CX is available from the Cache River National Wildlife Refuge Complex, 26320 Hwy 33 South, Augusta, Arkansas 72006, (870) 347–2614. The final EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public References and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371. Additional information about the Project is available from the FERC's Office of External Affairs, 1(866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*).

If you wish to comment, you may do so by one of the following methods. You may mail comments to the above address. You may also comment via the Internet at the following address: *angela_thompson@fws.gov*. Please include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us at the above phone number or address. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law.

The Fish and Wildlife Service is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

Authority: The authority to publish this notice is contained in 30 U.S.C. 185(k).

Dated: October 28, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8–26121 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0280; 40135–3210–0000–P3]

Fayetteville/Greenville Expansion Project, Texas Gas Transmission, LLC, Right-of-Way Permit Application To Cross Hillside National Wildlife Refuge, Holmes County, MS

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of right-of-way permit application.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), request public comment on a right-of-way (ROW) permit application we have received from Texas Gas Transmission, LLC (Texas Gas), to install a 36-inch-diameter natural gas pipeline under lands within Hillside National Wildlife Refuge (Refuge) in Holmes County, MS.

DATES: If you wish to comment on this application, you must do so by December 3, 2008. We will consider public comments received or postmarked by that date.

ADDRESSES: Send comments by U.S. mail to Ken Clough, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, MS 39213; by facsimile to (601) 965–4010; or by e-mail to *ken_clough@fws.gov*.

FOR FURTHER INFORMATION CONTACT: For copies of documents and to ask project questions, see ''Document Availability.''

SUPPLEMENTARY INFORMATION:

A. Background

We have received a right-of-way (ROW) permit application from Texas Gas to install a 36-inch-diameter natural gas pipeline under lands within the boundary of Hillside National Wildlife Refuge in Holmes County, MS. The proposed use is part of the Texas Gas Fayetteville/Greenville Expansion Project to construct, own, and operate 262.6 miles of 36-inch-diameter natural gas pipeline and associated facilities in the states of Arkansas and Mississippi. The Greenville Lateral, in Mississippi, consists of approximately 96.4 miles in Washington, Sunflower, Humphries, Holmes and Attala Counties. The pipeline will carry natural gas supplies from the Fayetteville Shale production area in north central Arkansas to consumer markets served by Texas Gas and other interstate pipelines. The pipeline is intended to provide increased pipeline capacity from the Fayetteville Shale production area.

Texas Gas proposes to use subsurface Horizontal Directional Drilling (HDD) technology to cross the Refuge lands. The HDD bore and installation of one 36-inch-diameter pipeline will take place between 95 and 115 feet below the surface of Refuge lands. The route will follow an abandoned railroad right-of-way for an estimated 1,405 feet below ground under the northern tip of the Refuge. The entry and exit holes of the HDD bore will be located approximately 1,000 feet outside the Refuge boundary. Texas Gas proposes to cut a 3-foot-wide path across the Refuge directly above the pipe location. The path will be used to hand-lay two electrical grid guide wires for guidance of the underground drill bit. A HDD drilling rig, set up outside the Refuge, will be used to drill

along a prescribed underground path. During this process, drilling fluid, bentonite clay, and water will be continuously pumped into the hole to remove cuttings and maintain the integrity of the hole. Bentonite is composed of natural clay minerals. Once the hole has been drilled, a prefabricated segment of pipe will be attached behind a reaming tool on the exit side of the crossing and pulled back through the drill hole to the drill rig, completing the crossing. The time required to complete the HDD is anticipated to be approximately 3–5 weeks, including setup, drilling time, pull-back, cleanup, and demobilization. Actual time drilling under the Refuge lands is estimated at 1 week.

B. Document Availability

Under the National Environmental Policy Act of 1969 (Pub. L. 91–190, 42 U.S.C. 4321–4347), we prepared a compatibility determination and an environmental action statement, and assessed the impacts of constructing and operating the proposed Texas Gas pipeline in order to assist the Federal Energy Regulatory Commission (FERC) in preparing a final environmental impact statement (EIS) for the proposed project. A copy of the compatibility determination is available from the Theodore Roosevelt National Wildlife Refuge Complex, 728 Yazoo Road, Hollandale, MS 38748; (662) 839–2638 (telephone). The final EIS is available for public inspection at: Federal Energy Regulatory Commission, Public References and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426; (202) 502–8371 (telephone). Additional information about the project is available from FERC's Office of External Affairs, by telephone (1–866–208–FERC) or on the FERC Web site: *http://www.ferc.gov.*

Interested parties may submit written comments by mail, facsimile, or e-mail to the address in the **ADDRESSES** section. 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 review, we cannot guarantee that we will be able to do so. After reviewing any comments we receive on the ROW application, we will issue our Record of Decision (ROD). The ROD will describe the rationale for our decision, along with any measures (permit conditions) we will require the applicant to carry out to minimize environmental harm if we have made a decision to issue the ROW permit.

Authority: We publish this notice under 30 U.S.C. 185(k).

Dated: October 28, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8–26125 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14828–B, F–14828–L; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to NANA Regional Corporation, Inc. The lands are in the vicinity of Ambler, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 18 N., R. 5 E.,
Secs. 10, 13, 14, and 15.
Containing 2,144.88 acres.

T. 20 N., R. 6 E.,
Secs. 17 and 18.
Containing 1,231.43 acres.

T. 21 N., R. 6 E.,
Secs. 28 and 33.
Containing 1,280 acres.
Aggregating 4,656.31 acres.

Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 3, 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.

Andrea Sanders,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–26120 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–09–1310–FI; COC70015]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC70015 from Nobel Energy, Inc., for lands in Garfield County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC70015 effective June 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: October 28, 2008.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E8–26116 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–09–1310–FI; COC70014]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC70014 from Nobel Energy, Inc., for lands in Garfield County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC70014 effective June 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: October 28, 2008.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E8–26118 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1430–EU; WYW–128340]

Notice of Realty Action; Proposed Direct Sale of Public Lands in Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: A parcel of public land totaling 29.42 acres in Sublette County, Wyoming, is being considered for direct sale to Magagna Bros., Inc. under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA) and implementing regulations contained in 43 CFR 2711.3–3(5), at no less than appraised fair market value. A direct sale of these public lands would resolve an inadvertent unauthorized use or occupancy of the lands.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by December 18, 2008.

ADDRESSES: Address all comments concerning this Notice to the Field Manager, Bureau of Land Management (BLM), Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Teri Deakins, Environmental Protection Specialist, at the above address or phone (307) 352–0211.

SUPPLEMENTARY INFORMATION: The following described public land in Sublette County, Wyoming, is being considered for direct sale under the authority of Section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750, 43 U.S.C. 1713) and implementing regulations contained in 43 CFR 2711.3–3(5).

Sixth Principal Meridian

T. 27 N., R. 103 W.,
Sec. 4: lot 6.

The area described contains 29.42 acres more or less.

The proposed sale is in conformance with and consistent with the objectives, goals and decisions of the BLM Green River Resource Management Plan, dated August 8, 1997, and the land is not required for other Federal purposes. Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record. Minerals will be reserved to the United States in the conveyance.

On November 3, 2008, the above described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale, BLM will not accept land use applications affecting the identified public land, except applications for the amendment of previously-filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or November 3, 2010, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments

For a period until December 18, 2008, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to the Field Manager, BLM Rock Springs Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Comments received electronically, via e-mail or facsimile, will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Rock Springs Field Office during regular business hours, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal indentifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an

official or representative of a business or organization. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

The land will not be offered for sale prior to December 18, 2008.

Authority: 43 CFR 2711.1–2.

Lance C. Porter,

Field Manager.

[FR Doc. E8–26119 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–5874–EU–038G]

Notice of Realty Action; Proposed Sale of Public Land, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action.

SUMMARY: A parcel of public land in Grant County, New Mexico, is being considered for sale under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA), at no less than the appraised fair market value.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by December 18, 2008.

ADDRESSES: Written comments concerning this Notice should be addressed to: District Manager, BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Lori Allen, Realty Specialist, at the above address or telephone (575) 525–4454.

SUPPLEMENTARY INFORMATION: The following described public land in Grant County, New Mexico is being considered for sale under the authority of section 203 of the FLPMA of 1976, (90 Stat. 2750, 43 U.S.C. 1713):

New Mexico Principal Meridian

T. 18 S., R. 11 W.,
Sec. 7.
T. 18 S., R. 12 W.,
Secs. 1, 2, 3, 8, and 12.

The exact acreage and legal descriptions will be determined by a Cadastral Survey.

The 1993 Mimbres Resource Management Plan identifies these parcels of public land as suitable for disposal. Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to section 209 of FLPMA will be analyzed during processing of the proposed sale.

On November 3, 2008, the above-described land will be segregated from appropriation under the public land laws, including the mining laws and mineral leasing laws, except the sale provisions of the FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting the identified public land, with the exception of applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or November 3, 2010, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments

For a period until December 18, 2008, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to the District Manager, BLM Las Cruces District Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Comments transmitted via e-mail will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Las Cruces District Office during regular business hours, except holidays.

Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names or addresses of those who comment will be made on a case-by-case basis.

Such requests will be honored to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization.

(Authority: 43 CFR 2711.1–2)

Bill Childress,

District Manager, Las Cruces.

[FR Doc. E8–26129 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Avalanche Hazard Reduction by Burlington Northern Santa Fe Railway in Glacier National Park and Flathead National Forest, MT Final Environmental Impact Statement, Record of Decision, Glacier National Park, MT

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Record of Decision on the Final Environmental Impact Statement for the Avalanche Hazard Reduction by Burlington Northern Santa Fe Railway in Glacier National Park and Flathead National Forest, Glacier National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Avalanche Hazard Reduction by Burlington Northern Santa Fe Railway (BNSF) in Glacier National Park (GNP) and Flathead National Forest, Montana, Final Environmental Impact Statement. On September 12, 2008, the Regional Director, Intermountain Region approved the Record of Decision. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the FEIS issued on August 2, 2008. Four alternatives were analyzed and Alternative B was identified as the preferred which will include the following actions: GNP will issue a special use permit to BNSF for non-explosive snow stability testing, installation of a weather station and other avalanche forecasting equipment and detection devices in the Middle Fork area within the park. All

installations will be painted to blend in and reduce their visibility. GNP will not permit the use of explosives for avalanche hazard reduction within the park except during emergency extenuating circumstances after all other options, including railroad delays, have been exercised. GNP recommends that BNSF build snowsheds in areas of the John Stevens Canyon that currently do not have them. GNP also recommends that BNSF lengthen existing snowsheds that do not provide sufficient protection from avalanche activity. In the event that BNSF constructs snowsheds, GNP recommends that wildlife crossings be incorporated into the structures where appropriate. Wildlife specialists from GNP, FNF and the USFWS will work closely with BNSF to assist with this effort. GNP also recommends that BNSF design historically compatible extensions on the existing historic snowsheds. Cultural Resource Specialists from both GNP and FNF will assist with this effort. Other alternatives analyzed were: (1) No Action—BNSF would continue to use avalanche forecasting, travel restrictions, and delays to protect employees, freight, equipment and Amtrak passengers; (2) Alternative C–GNP would permit explosive use for up to ten years for avalanche hazard reduction after a commitment from BNSF to build snowsheds and fund a 15 year resource monitoring program; and (3) Alternative D–GNP would permit BNSF to conduct a permanent explosive avalanche hazard reduction program using military artillery in the park. Construction of less than one mile of snowsheds offers the best avalanche protection for Amtrak passengers, BNSF employees, equipment, and freight. Explosive avalanche hazard reduction is an inappropriate use of park lands and may have unacceptable impacts on park resources and values, as defined in the 2006 NPS Management Policies. GNP along with Waterton Lakes National Park is the world's first International Peace Park, an International Biosphere Reserve, and a World Heritage Site. Three comments were received on the Final EIS supporting the preferred alternative. Over 13,000 comments were received on the Draft EIS in addition to 1,100 comments received during scoping.

The public as well as other agencies and tribes were overwhelmingly in support of the preferred alternative. The Record of Decision includes a description of the decision, key actions and mitigation measures, a synopsis of other alternatives considered, the basis for the decision, findings on impairment, unacceptable impacts and appropriate use of park resources and values, a description of the environmentally preferable alternative, and an overview of public and agency involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Mary Riddle, Glacier National Park, West Glacier, Montana 59936, *mary_riddle@nps.gov*.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://parkplanning.nps.gov/glac*.

Dated: October 24, 2008.

Anthony J. Schetzsle,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. E8–26122 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement and General Management Plan; San Juan Island National Historical Park, San Juan County, WA; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR Part 1500–1508), the National Park Service (NPS), Department of the Interior, has prepared a final environmental impact statement (FEIS) for updating the General Management Plan (GMP) for San Juan Island National Historical Park located in San Juan County, Washington. The current GMP was prepared in 1979. This FEIS describes and analyzes three GMP alternatives that respond to both NPS planning requirements and to the public's concerns and issues, identified during the scoping and public involvement process. Each alternative presents management strategies for resource protection and preservation, education and interpretation, visitor use and facilities, land protection and boundaries, and long-term operations and management of the park. The potential environmental consequences of all the alternatives, and mitigation strategies, are identified and analyzed in the FEIS. In addition to a ''no-action'' alternative, an ''environmentally preferred'' alternative is identified.

Proposed Plan and Alternatives: Alternative A constitutes the ''no-action'' alternative and assumes a continuation of existing management and trends at San Juan Island National Historical Park. The primary emphasis in current management is placed on the protection and preservation of cultural resources. Since 1966, the park has been listed in the National Register of Historic Places and is a National Historic Landmark. The management of cultural landscapes around the immediate encampment areas at American Camp and English Camp would continue to emphasize cultural landscape management while respecting the natural environment and natural processes. No new construction would be authorized.

Alternative B would increase visitor opportunities and outreach at both English Camp and American Camp, as well as in the town of Friday Harbor through additional visitor facilities, recreational opportunities, programs, and services. Natural and cultural resources interpretation would be enhanced through more extensive facilities and programs. At English Camp, the road system would be reconfigured as a one-way loop road by connecting a road segment approximately one-fifth mile long from the entrance road to the administrative road. The road would follow the existing historic road alignment where possible. The Crook house would be rehabilitated as a visitor contact facility on the ground floor and for administrative use on the second floor. At American Camp, the 1979 double-wide trailer that serves as the temporary visitor center at American Camp would be removed, the site restored to natural conditions, and a new enlarged visitor center would be constructed north of the redoubt. The new visitor center would include space for a collections study room for natural and cultural resource items, including a portion of the military-era collections. The existing road to the redoubt off Pickett's Lane would be removed and converted to a trail. The cultural landscapes would be enhanced to aid visitor understanding and interpretation through a variety of techniques. The prairie would be restored to native plant species. Off-island interpretation would be enhanced through partnerships. The park would propose boundary adjustments at both sites to include important natural and cultural resources related to the purpose of the park.

Alternative C is the agency-preferred alternative as it would broaden the scope of resource management and interpretation programs to emphasize connections and interrelationships between the park's natural and cultural resources. New facilities, trails and

programs provide opportunities for visitors to understand the importance of the park's natural resources in defining the cultural landscapes and influencing the settlement and historic events of San Juan Island. At English Camp, the Crook house would be retained, stabilized, and used as an exterior exhibit while the hospital would be rehabilitated and opened to the public for interpretation. The 1979 double-wide trailer that serves as the temporary visitor center at American Camp would be removed and replaced with a permanent, enlarged visitor center at the existing site, allowing for improved exhibits and staff space. A collections study room for natural and cultural resource items, including a portion of the military-era collections would be relocated to the park. Additional buildings would be open to the public for interpretation as well as research and academic study. As in Alternative B, the existing road to the redoubt would be removed and converted to a trail and the prairie would be restored to native plant species. Historic buildings from the encampment period still existing on the island would be repatriated back to their original locations within the camps. Off-island interpretation would be enhanced through partnerships. Finally, the park would also propose adjusting the boundary at both sites to include important natural and cultural resources related to the purpose of the park. Alternative C is deemed to be the ''environmentally preferred'' alternative.

SUPPLEMENTARY INFORMATION: A Notice of Intent announcing preparation of the DEIS and general management plan was published in the **Federal Register** on February 5, 2003. The public scoping phase formally began in March 2003 when the NPS produced and distributed an initial newsletter announcing onset of the planning process and soliciting feedback on issues to be addressed in the plan. The newsletter was directly mailed to the park's 216 person mailing list. In addition, 4,000 copies of the newsletter were inserted into The Journal of the San Juan Islands newspaper, which reaches approximately 3,000 island residents and approximately 1,000 residents off-island. An additional 2,500 copies were distributed to area libraries, civic buildings, business, churches, museums, universities, communities, dignitaries and elected officials. The newsletter was also placed on the park's Web site to reach a wider audience.

Three public workshops were held in April 2003, with two in Friday Harbor, Washington and one in Seattle, Washington. Presentations about the mission of the National Park Service and purpose and significance of San Juan Island National Historical Park were followed by small group work sessions that allowed people to present and discuss issues, experiences, and ideas for the park. Approximately thirty-nine people attended the San Juan Island workshops, and an additional four participated in the Seattle workshop. Eighteen written responses were also collected during the scoping period.

A second newsletter was produced in November 2003 summarizing the comments received, written and oral, during the scoping period. The comments covered a broad range of issues, concerns, personal experiences, and recommendations for the park. When compiled, over 224 different comments or ideas were represented. The comments can be broadly organized in the following topics: Resource preservation and management; visitor experience and services; park facilities, operations, management and maintenance; and park administration and planning. Though many new actions and ideas were suggested by the public during this comment period, no new issues were identified.

On January 14, 2008, the NPS mailed 315 copies of the draft GMP/EIS to agencies, governmental representatives, organizations, and interested individuals. Copies of the draft GMP/EIS were placed in the Friday Harbor and Anacortes public libraries for public review. The draft GMP/EIS was also placed on the park's Planning, Environment, and Public Comment webpage, and linked to the park's home page, allowing people to access the document and comment electronically. The park's Notice of Availability was published in the **Federal Register** on January 28, 2008, providing details of the release of the draft GMP/EIS for public review; the Environmental Protection Agency's (EPA) notice of filing appeared on January 18, 2008. All comments received through March 24, 2008, were included in the official record.

A total of 2,000 newsletters were printed containing a summary of the draft GMP noting the public meetings and how individuals could obtain a full copy of the draft GMP/EIS. Each newsletter included a postage-paid return form for public comments. Newsletters were distributed to libraries, civic buildings, businesses, churches, museums, universities, communities, nonprofit organizations, and elected officials. The newsletter was also placed on the park's Web site and on the Planning, Environment, and Public Comment Web Site. An electronic public comment form was provided through this Web site.

Nine press releases were distributed and four newspapers—the Journal of the San Juan Islands, the Anacortes American, the Skagit Valley Herald, and the Bellingham Herald—placed advances in their papers and their online Web sites announcing the locations, times, and dates for the public workshops. The San Juan Islander, an online newspaper, also announced the public workshops.

In February 2008, the NPS planning team held three open houses in Anacortes, Washington and Friday Harbor, Washington. The purpose of the meetings was to provide an opportunity for the public to meet with the NPS planning team to discuss the draft GMP/EIS, clarify information, ask questions, and provide comments. Approximately 95 people attended the meetings and over one hundred comments were recorded during the sessions.

At the close of the public comment period, the NPS received a total of 30 pieces of written correspondence, including letters from agencies, organizations and individuals; ''return forms'' from the draft summary newsletter; electronic Web site comments and e-mails to the park. Comments were grouped into eleven broad categories, and of those categories, four major areas of emphasis emerged from the comments: alternative, resource preservation, visitor experience, and land protection/boundary. In addition, the EPA expressed environmental concerns about potential impacts to air and water quality, and requested additional data on current water and air quality within the park and mitigation strategies for air and water quality impacts. The FEIS has been updated with additional information to address EPA concerns, and contains responses to all substantive comments received from the public.

FOR FURTHER INFORMATION CONTACT: Interested persons and organizations may obtain the Final EIS/GMP or request further information by contacting Peter Dederich, Superintendent, San Juan Island National Historical Park, 650 Mullis Street, Suite 100, Friday Harbor, Washington 98250; or via telephone at (360) 378–2240. A limited number of additional hard copies of this report are available from the mailing address above. In addition, the final GMP/EIS is available in hard copy at the public library in Friday Harbor, Washington and electronically at the Planning,

Environment, and Public Comment Web site *http://parkplanning.nps.gov/sajh.*

Decision Process: Following the release of the Final GMP/EIS, a Record of Decision will be prepared and approved not sooner than 30 days after the EPA has published its notice of filing of the document in the **Federal Register**. A notice of the approved GMP would be subsequently published. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation will be the Superintendent, San Juan Island National Historical Park.

Dated: July 27, 2008.

George J. Turnbull,

Acting Regional Director.

[FR Doc. E8–26128 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–46–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service.

ACTION: Notice of two meetings to be held on March 19, 2009 and September 10, 2009.

SUMMARY: This notice sets forth the dates of March 19, 2009 and September 10, 2009 of the Gettysburg National Military Park Advisory Commission.

DATES: The public meetings will be held on March 19, 2009 and September 10, 2009 from 7 p.m. to 9 p.m.

Location: The meetings will be held at the Ford Education Center, 1195 Baltimore Pike, Gettysburg, Pennsylvania 17325

Agenda: The March 19, 2009 and September 10, 2009 meetings will consist of the Sub-Committee Reports from the Historical, Executive, and Interpretive Committees; Federal Consistency Reports Within the Gettysburg Battlefield Historic District; Operational Updates on Park Activities, which consists of an update on the Gettysburg National Battlefield Museum Foundation and National Park Service activities related to the new Visitor Center/Museum Complex, updates on the Wills House and Train Station; Transportation which consists of the National Park Service and the Gettysburg Borough working on the Shuttle System; Update on Land Acquisition within the park boundary or in the historic district; and the Citizens Open Forum where the public can make comments and ask questions on any park activity.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Gettysburg National Military Park Advisory Commission, 1195 Baltimore Pike, Gettysburg, Pennsylvania 17325.

Dated: October 15, 2008.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. E8–26130 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–JT–M

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 18, 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 18, 2008.

Erika Martin-Seibert,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

DISTRICT OF COLUMBIA

District of Columbia

Strand Theater, 5129–5131 Nannie Helen Burroughs Ave., NE., Washington, DC, 08001093

Third Baptist Church, 1546 5th St., NW., Washington, DC, 08001094

ILLINOIS

Cook County

Frank Lloyd Wright-Prairie School of Architecture Historic District (Boundary Increase), Roughly bounded by Division St., on the N., N. Cuyler Ave., on the E., Lake St., on the S. and N. Harlem Ave on the W., Oak Park, 08001096

Lindemann and Hoverson Company Showroom and Warehouse, 2620 W. Washington Blvd., Chicago, 08001095

Otis Elevator Company Factory Building, 1435 W. 15th St. and 1501 S. Laflin St., Chicago, 08001097

Du Page County

Robbins Park Historic District, Bounded by Chicago Ave., 8th St., County Line Rd., and Garfield St., Hinsdale, 08001098

IOWA

Jones County

Stone City Historic District, 12828–12573 Stone City Rd., 12392–12340 Dearborn Rd., 12381–12551 County Rd. X28, Anamosa, 08001099

Wapello County

Burlington Depot, 210 W. Main St., Ottumwa, 08001100

MARYLAND

Anne Arundel County

Universal Lodge No. 14, 64 Clay St., Annapolis, 08001101

MICHIGAN

Ingham County

Ottawa Street Power Station, 217 E. Ottawa St., Lansing, 08001103

Kent County

Alten, Mathias, House and Studio, 1593 E. Fulton St., Grand Rapids, 08001102

Montcalm County

Greenville Downtown Historic District, Lafayette between Montcalm and Benton and adjacent block of Montcalm, Grove, Cass, and Washington on either side, Greenville, 08001104

MICHIGAN

Oakland County

McCoy, Kittie C., House, 1455 Benstein Rd., Commerce, 08001105

Wayne County

Midtown Woodward Historic District, 2951–3424 Woodward, 14 Charlotte, 10 and 25 Peterboro, Detroit, 08001106

MONTANA

Missoula County

Maclean Cabin, 6014 Boyscout Rd., Seeley Lake, 08001107

NEW JERSEY

Burlington County

Old Schoolhouse, 35 Brainerd St., Mount Holly, 08001108

Somerset County

Baker-Dauderstadt Farm, 30 DuBois Rd., Warren, 08001109

PUERTO RICO

San Juan Municipality

Condado Vanderbilt Hotel, 1055 Ashford Ave., San Juan, 08001110

TENNESSEE

Marion County

Hale's Bar Dam Powerhouse, 1265 Hale's Bar Rd., Haletown, 08001111

VIRGINIA

Clarke County

Bear's Den Rural Historic District, Generally runs along both sides of ridge along parts of Raven Rocks and Blue Ridge Mtn. Rds., Bluemont, 08001112

Loudoun County

Arcola Slave Quarters, 24837 Evergreen Mills Rd., Arcola, 08001113

Bear's Den Rural Historic District, Generally runs along both sides of ridge along parts of Raven Rocks and Blue Ridge Mtn. Rds., Bluemont, 08001112

Sussex County

Glenview, 13098 Comans Well Rd., Stony Creek, 08001114

WISCONSIN

Columbia County

Mills, Rob, Block, 109–111 S. Main St., Lodi, 08001115

In the interest of preservation the comment period for the following action has been shortened to three (3) days.

Request for MOVE has been made for the following resources:

VIRGINIA

Mathews County

James, Thomas, Old, Store, Main and Maple Sts., Mathews Court House, 08000244

[FR Doc. E8–26092 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–640]

In the Matter of Certain Short-Wavelength Light Emitting Diodes, Laser Diodes and Products Containing Same; Notice of Commission Decision to Review and Remand in Part an Initial Determination of the Administrative Law Judge Granting Complainant's Motion To Amend the Amended Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand in part the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 33) granting complainant's motion to amend the amended complaint.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. 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 on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 25, 2008, based on a complaint filed by Gertrude Neumark Rothschild of Hartsdale, New York (''Rothschild''). 73 FR 1575 (March 25, 2008). The complaint, as supplemented, alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation, sale for importation, and sale within the United States after importation of certain short-wavelength light emitting diodes, laser diodes and products containing the same by reason of infringement of U.S. Patent No. 5,252,499. The original complaint, as supplemented, named numerous respondents.

On September 2, 2008, Complainant Rothschild filed a motion to amend the amended complaint and notice of investigation to add additional respondents and to clarify the products that are at issue in the investigation. On September 10, 2008, respondent Toshiba Corporation of Japan (''Toshiba'') opposed this motion. On September 19, 2008, the ALJ issued an ID (Order No. 33) granting Rothschild's motion to amend the complaint. On September 22, 2008, proposed respondent Citizen Electronics Co., Ltd. of Japan (''Citizen'') filed a motion for leave to intervene for the limited purpose of opposing Rothschild's motion to amend the complaint and notice of investigation. Citizen's motion was not considered by the administrative law judge when he issued Order No. 33.

On October 1, 2008, respondent Toshiba and proposed respondent Citizen filed a joint petition for review of the administrative law judge's ID. On October 8, 2008, the Commission investigative attorney and Complainant Rothschild each filed a response to the joint petition.

On October 10, 2008, the Commission extended the deadline for determining whether to review the subject ID by fourteen (14) days to November 3, 2008.

Having examined *inter alia* the administrative law judge's ID, the joint petition for review, and the responses thereto, the Commission has determined to review and remand the ID in part. Specifically, the Commission has determined to review the issue of whether Citizen was properly added as a respondent to the investigation in light of the fact that Citizen's response, which the Commission finds to have been timely filed, was not considered by the presiding administrative law judge. On review, the Commission directs the administrative law judge to consider Citizen's September 22, 2008 response to Complainant's motion to add Citizen to the investigation. The Commission takes no position on the merits of Citizen's response. The Commission has determined not to review any other issue decided in Order No. 33.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.42(h).

Issued: October 28, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–26068 Filed 10–31–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1023 (Review)]

Ceramic Station Post Insulators From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on imports of ceramic station post insulators from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the

antidumping duty order on ceramic station post insulators from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is December 23, 2008. Comments on the adequacy of responses may be filed with the Commission by January 16, 2009. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 30, 2003, the Department of Commerce issued an antidumping duty order on imports of ceramic station post insulators from Japan (68 FR 75211). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined a single *Domestic Like Product* of high and extra-high voltage ceramic station post insulators coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all domestic producers of high and extra-high voltage ceramic station post insulators, with the exception of Locke Insulators, Inc. (''Locke''). Domestic producer Locke was excluded from the *Domestic Industry* as a related party.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is December 30, 2003.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official recently has advised that a five-year review is no longer considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are no longer required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 09–5–190, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

specified below. The deadline for filing such responses is December 23, 2008. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 16, 2009. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2007 (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into

production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 24, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–25839 Filed 10–31–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1021 (Review)]

Malleable Cast Iron Pipe Fittings From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on imports of malleable cast iron pipe fittings from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on imports for malleable cast iron pipe fittings from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is December 23, 2008. Comments on the adequacy of responses may be filed with the Commission by January 16, 2009. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On December 12, 2003, the Department of Commerce issued an antidumping duty order on imports of malleable cast iron pipe fittings from China (68 FR 69376). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission found one *Domestic Like Product* consisting of all malleable fittings other than grooved fittings, co-extensive with the scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all producers of malleable fittings corresponding to the scope.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is December 12, 2003.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official recently has advised that a five-year review is no longer considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are no longer required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 09–5–191, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 23, 2008. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 16, 2009. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: October 24, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–25841 Filed 10–31–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Pursuant to Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on October 22, 2008, a proposed Consent Decree in *United States of America* v. *Domtar Paper Company LLC*, Civil Action No. 4:08–cv–179, was lodged with the United States District Court for the Eastern District of North Carolina.

In this action the United States sought to require the Defendant Domtar Paper Company LLC to conduct remedial design and remedial action to address releases and threatened releases of hazardous substances at the Domtar Paper Company LLC (formerly Weyerhaeuser Company) Plymouth Wood Treating Plant Superfund Site (''Site'') near the town of Plymouth in Martin County, North Carolina. The United States also sought to recover certain past and future costs incurred by the Environmental Protection Agency (''EPA'') during the performance of response actions at the Site.

Under the Consent Decree, the Defendant will perform the remedial design and remedial action at Operable Unit #4, which consists of the sediments and surface waters in Welch Creek and its associated wetlands, pursuant to the September 26, 2007 Record of Decision (ROD). The remedy provides for the placement of a thin layer of clean sand capping the upstream reach of the creek; long-term monitoring and maintenance of the cap; monitoring sediment mobility in the less-contaminated midstream reach of the creek; long-term testing and monitoring of sediments, surface water, and biota to document the performance of the remedy; and institutional controls to ensure public health and maintain the integrity of the remedy. The Defendant will also reimburse the Hazardous Substance Superfund for EPA's response costs incurred after March 5, 2007 at or in connection with Operable Unit 4.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Domtar Paper Company LLC*, Civil Action No. 4:08–cv–179 (E.D.N.C.), DOJ Ref. 90–11–3–07838/2.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of North Carolina, 310 New Bern Avenue, Suite 800, Raleigh, North Carolina 27601, and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.htm.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States of America* v. *Domtar Paper Company LLC,* Civil Action No. 4:08–cv–179 (E.D.N.C.), DOJ Ref. 90–11–3–07838/2, and enclose a check in the amount of $65.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. E8–26070 Filed 10–31–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Oil Pollution Act of 1990

Notice is hereby given that on October 28, 2008, a proposed consent decree in *United States of America and the State of Kansas* v. *Magellan Ammonia Pipeline et al.* Civil Action No. 08–cv–2532, was lodged with the United States District Court for the District of Kansas.

The Complaint, filed by the Plaintiffs who are Trustees for natural resources, alleges that the Defendants are liable under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability

Act (''CERCLA''), 42 U.S.C. 9607(a), and Section 311 of the Clean Water Act (''CWA''), 33 U.S.C. 1321, for damages for injury to, destruction of, or loss of natural resources in or near Kingman, Kansas, resulting from the release of anhydrous ammonia from a pipeline owned and operated by Defendants on or about October 27, 2004.

In the Consent Decree, the Defendants have agreed to pay a total of $452,535 to the Trustees as Natural Resource Damages including past Natural Resource Damage Assessment costs. The Consent Decree also requires the Defendants to purchase a specified 160 acre parcel of property with natural resources equivalent to those injured, lost and destroyed by the ammonia release and transfer it to the Wichita State University Foundation, a non profit that will use the property for biological research and preserve it in perpetuity.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States of America, The State of Kansas* v. *Magellan Ammonia Pipeline, et al.,* Civil Action No. 08–cv–2532 Ref. No. 90–5–1–1–06074/3.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be examined at the Office of the United States Attorney, Western District of Washington, 700 Stewart Street Suite 5220, Seattle, WA 98101–1271 (206) 553–7970. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources.

[FR Doc. E8–26077 Filed 10–31–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 15, 2008, Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 2, 2009.

Dated: October 28, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–26145 Filed 10–31–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1491]

Hearing of the Review Panel on Prison Rape

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of hearing.

SUMMARY: The Office of Justice Programs (OJP) announces that the Review Panel on Prison Rape (Panel) will hold a hearing in Culpeper, Virginia on November 14, 2008. The hearing time and location are noted below.The purpose of the hearing is to assist the Bureau of Justice Statistics (BJS) in identifying common characteristics of victims and perpetrators of rape in county jails, and the characteristics of U.S. jails with the highest and lowest incidence of rape, based on an anonymous survey by BJS of inmates in a representative sample of jails. On June 25, 2008, BJS issued the report *Sexual Victimization in Local Jails Reported by Inmates,* 2007. The report provides a listing of local jails grouped according to the prevalence of reported sexual victimization, and it formed the basis of the Panel's decision about which facilities would be the subject of testimony.

DATES: Friday, November 14, 2008, 11 a.m. to 5:30 p.m. (Culpeper County, Virginia Jail—facility with a low prevalence of reported sexual victimization).

ADDRESSES: The hearing will take place at the County Administration Building, 302 North Main Street, Culpeper, Virginia 22701.

FOR FURTHER INFORMATION CONTACT: Christopher Zubowicz, Designated Federal Official, OJP, *christopher.zubowicz@usdoj.gov,* (202) 307–0690. (Note: This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Panel, which was established pursuant to the Prison Rape Elimination Act of 2003, Public Law 108–79, 117 Stat. 972 (codified as amended at 42 U.S.C. 15601–15609 (2006)), will hold its next hearing to carry out the review functions specified at 42 U.S.C. 15603(b)(3)(A). Testimony from the hearing will assist the Panel in carrying out its statutory obligations and in identifying best practices for deterring rape in county jails. Space is limited at the hearing location. Special needs requests should be made to Christopher Zubowicz, Designated Federal Official, OJP, *christopher.zubowicz@usdoj.gov* or

(202) 307–0690, at least one week before the hearing.

Michael Alston,

Office of Justice Programs.

[FR Doc. E8–26064 Filed 10–31–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 28, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Mary Beth Smith-Toomey on 202–693–4223 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Training Administration.

Type of Review: Extension without change of an existing OMB Control Number.

Title of Collection: Labor Certification for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Administration Measures to Improve Program Performance.

OMB Control Number: 1205–0404.

Affected Public: Private Sector—Business or other for-profits, Farms, Not-for-profit Institutions.

Total Estimated Number of Respondents: 385.

Total Estimated Annual Burden Hours: 96.

Total Estimated Annual Costs Burden: $0.

Description: The Department's regulation at 20 CFR 655.103(e) defines the ''Fifty-percent Rule,'' which requires the employer, who received a labor certification in the H–2A program, to provide employment to any qualified, eligible U.S. worker who applies to the employer until 50% of the time of need for the foreign worker has elapsed. Section 655.106(e)(1)(ii) mandates that agricultural employers inform the applicable State Workforce Agencies if the H–2A workers do not depart for the place of employment on or before the first date of need in writing (or orally and then confirmed in writing) as soon as the employer knows that the workers will not depart by the first date of need. This provision is necessary so that the SWA can begin calculation of when to stop referring workers under the Fifty-percent Rule and when the employer can cease active recruitment. For additional information, see related notice published at Volume 73 FR 36358 on June 26, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E8–26104 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,033]

Eaton Corporation, Clutch Division; Auburn, 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 September 25, 2008, applicable to workers of Eaton Corporation, Clutch Division, Auburn, Indiana. The notice was published in the **Federal Register** on October 8, 2008 (73 FR 58981).

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 truck clutches.

Findings show that there was a previous certification, TA–W–60,256, issued on December 18, 2006, for the workers of the Auburn, Indiana, location of the subject firm. That certification expires December 18, 2008. To avoid an overlap in worker group coverage for the workers of the Auburn, Indiana, location, the certification is being amended to change the impact date from September 10, 2007, to December 19, 2008.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Eaton Corporation, Clutch Division, who were adversely affected by a shift in production of truck clutches to Mexico.

The amended notice applicable to TA–W–64,033 is hereby issued as follows:

All workers of Eaton Corporation, Clutch Division, Auburn, Indiana, who become totally or partially separated from employment on or after December 19, 2008, through September 25, 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 17th day of October 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–26052 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,139, TA–W–63,139D]

Valspar-Furniture Sales Group & International Color Design Center a Subsidiary of Valspar Global Wood Coatings d/b/a Engineered Polymer Solutions: High Point, NC; Including an Employee of Valspar-Furniture Sales Group & International Color Design Center a Subsidiary of Valspar Global Wood Coatings d/b/a Engineered Polymer Solutions: High Point, NC Working Out of Lafayette, 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 June 20, 2008, applicable to workers of Valspar-Furniture Sales Group & International Color Design Center, a subsidiary of Valspar Global Wood Coatings, d/b/a/ Engineered Polymer Solutions, High Point, North Carolina. The notice was published in the **Federal Register** on July 14, 2008 (73 FR 40388).

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 wood coatings (paints, lacquers, and stains).

New information shows that a worker separation has occurred involving an employee (Mr. Reginald Gallant) working out of Lafayette, Indiana, in support of and under the control of the High Point, North Carolina, location of Valspar-Furniture Sales Group & International Color Design Center, a subsidiary of Valspar Global Wood Coatings, d/b/a/ Engineered Polymer Solutions.

Based on these findings, the Department is amending this certification to include an employee in support of the High Point, North Carolina, facility of the subject firm working out of Lafayette, Indiana.

The intent of the Department's certification is to include all workers of Valspar-Furniture Sales Group & International Color Design Center, a subsidiary of Valspar Global Wood Coatings, d/b/a Engineered Polymer Solutions, High Point, North Carolina, who qualify as secondarily affected by increased imports of wood coatings (paints, lacquers, and stains).

The amended notice applicable to TA–W–63,139 is hereby issued as follows:

''All workers of Valspar-Furniture Sales Group & International Color Design Center, a subsidiary of Valspar Global Wood Coatings, High Point, North Carolina, (TA–W–63,139), including an employee in support of Valspar-Furniture Sales Group & International Color Design Center, a subsidiary of Valspar Global Wood Coatings, High Point, North Carolina, working in Lafayette, Indiana (TA–W–63,139D), who became totally or partially separated from employment on or after May 6, 2007, through June 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 21st day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–26049 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Rhode Island

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB Program for Rhode Island.

The following change has occurred since the publication of the last notice regarding the State's EB status:

- Effective October 21, 2008, Rhode Island's 3-month seasonally adjusted total unemployment rate rose to 8.4 percent, exceeding the 8 percent threshold. This causes the State to be triggered ''on'' to a high unemployment period (HUP) in the EB program period beginning November 9, 2008.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning a HUP period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who may be eligible for increased benefits due to the HUP (20 CFR 615.13 (c) (1)). Persons who wish to inquire about their rights under the program, should contact their state workforce agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 28th day of October 2008.

Brent R. Orrell,

Deputy Assistant Secretary of Labor for Employment and Training.

[FR Doc. E8–26136 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FW–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 13 through October 17, 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.

None.

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.

None.

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–63,991; Woodside-United Acquisition, LLC, d/b/a United Steel and Wire Company, Battle Creek, MI: September 4, 2007.

TA–W–64,113; Capel, Inc., Troy, NC: September 11, 2007.

TA–W–64,178; Elbeco Incorporated, City Shirt Company Division, Frackville, PA: September 7, 2008.

TA–W–64,179; Elbeco Incorporated, Galion Manufacturing Div., Galion, OH: October 6, 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–63,949; Casco Group, Inc., Cerritos, CA: August 25, 2007.

TA–W–64,056; Remy International, Inc. Co., World Wide Automotive, Winchester, VA: September 11, 2007.

TA–W–64,135; Panasonic Electronic Devices Corporation of America, Knoxville, TN: September 29, 2007.

TA–W–64,137; Electro Scientific Industries, Inc., Operations Group, Portland, OR: September 22, 2007.

TA–W–64,162; Rock-Tenn Company, Baltimore, MD: September 22, 2007.

TA–W–64,168; Dynamic Cooking Systems, Inc., Fisher & Paykel Appliances, Huntington Beach, CA: September 26, 2007.

TA–W–64,181; Autoliv, Inc., Steering Wheel Group, Molding Dept., Time Customized, Columbia City, IN: October 6, 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–64,108A; American Fibers and Yarns Company, Afton, VA: September 24, 2007.

TA–W–64,108B; American Fibers and Yarns Company, Bainbridge, GA: September 24, 2007.

TA–W–64,108; American Fibers and Yarns Company, Chapel Hill, NC: September 24, 2007.

TA–W–64,121; GE Consumer and Industrial, Cleveland, OH: September 25, 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.

None.

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.

None.

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–64,000; Northwood Manufacturing, La Grande, OR.

TA–W–64,173; Ellen Tracy, A Subsidiary of Liz Claiborne, Inc., New York, NY.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–64,084; Adobe Air, Inc., Phoenix, AZ.

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 13 through October 17, 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 28, 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–26047 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 13, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 13, 2008. The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 23rd day of October 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

APPENDIX

TAA petitions instituted between 10/14/08 and 10/17/08

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
.				
64210	JDS Uniphase (Comp)	Louisville, CO	10/14/08	10/13/08
64211	Tarkett Alabama, Inc. (Comp)	Florence, AL	10/14/08	10/10/08
64212	BAE Systems-Product Group (Comp)	Central Lake, MI	10/14/08	10/01/08
64213	Stanley Fastening Systems, L.P. (Comp)	East Greenwich, RI	10/14/08	10/10/08
64214	KDH Defense Systems (Wkrs)	Carmichaels, PA	10/14/08	10/10/08

APPENDIX—Continued

TAA petitions instituted between 10/14/08 and 10/17/08

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
64215	Hewlett-Packard Imaging Printing Group (Comp)	San Diego, CA	10/14/08	10/09/08
64216	Volvo Penta Marine Products LLC (Wkrs)	Lexington, TN	10/14/08	10/09/08
64217	ICG Castings, Inc (State)	Dowagiac, MI	10/14/08	09/15/08
64218	Trilogy Finishing, Inc. (State)	Detroit, MI	10/14/08	10/03/08
64219	GKN Sintered Metals (Wkrs)	Emporium, PA	10/14/08	10/03/08
64220	Oddi Atlantic LLC (State)	Princess Ann, MD	10/15/08	10/14/08
64221	Hella Electronics Corporation (State)	Flora, IL	10/15/08	10/13/08
64222	TRW Automotive U.S. LLC (State)	Marshall, IL	10/15/08	10/13/08
64223	Super Brands LLC (Wkrs)	Henderson, NV	10/15/08	10/14/08
64224	Ryder Integrated Services (Comp)	Novi, MI	10/15/08	10/10/08
64225	Rheem Manufacturing (Wkrs)	Milledgeville, GA	10/15/08	10/14/08
64226	Diversified Machine, Inc. (Comp)	Canton, MI	10/15/08	10/08/08
64227	Federal Mogul (Wkrs)	South Bend, IN	10/15/08	10/14/08
64228	Rockwell Collins, Inc. (State)	Miami, FL	10/15/08	10/14/08
64229	Hanesbrand, Inc. (Comp)	Forest City, NC	10/16/08	10/05/08
64230	Hooker Furniture Company (Wkrs)	Martinsville, VA	10/16/08	10/13/08
64231	HAAS TCM (Wkrs)	West Chester, PA	10/16/08	10/01/08
64232	Sierra Pine Medite Division (Wkrs)	Medford, OR	10/16/08	10/15/08
64233	Sun Mountain Lumber, Inc. (Comp)	Deer Lodge, MT	10/16/08	10/14/08
64234	Lumax Industries, Inc. (Wkrs)	Altoona, PA	10/16/08	10/15/08
64235	DynAmerica Manufacturing (Wkrs)	Muncie, IN	10/16/08	10/10/08
64236	Shop Vac Endicott (State)	Endicott, NY	10/17/08	10/16/08
64237	Cone Denim White Oak Plant (Comp)	Greensboro, NC	10/17/08	10/15/08
64238	Plum Creek MDF, Inc. (Comp)	Columbia Falls, MT	10/17/08	10/16/08
64239	Diversified Textile Machinery Corporation (Comp)	Kings Mountain, NC	10/17/08	10/16/08
64240	Labinal, Inc. (Comp)	Pryor, OK	10/17/08	10/16/08
64241	The Baxter Corporation (Comp)	Franklin Lakes, NJ	10/17/08	10/16/08
64242	Emerald Performance Materials (Wkrs)	Kalama, WA	10/17/08	10/14/08
64243	ClearPlas LLC (Comp)	Leominster, MA	10/17/08	10/13/08
64244	Nautilus, Inc. (Comp)	Tulsa, OK	10/17/08	10/15/08
64245	Delphi Energy and Chassis Needmore Rd. and Dayton Plant 3 (UAW).	Dayton, OH	10/17/08	10/15/08

[FR Doc. E8–26046 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, U.S. Department of Labor (USDOL).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10 (a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and Section 166(h)(4) of the Workforce Investment Act (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the next meeting of the Native American Employment and Training Council (NAETC), as constituted under WIA.

DATES: The meeting will begin at 9 a.m. (Central Daylight Time) on Monday, November 17, 2008, and continue until 5 p.m. that day. The meeting will reconvene at 1 p.m. on Tuesday, November 18, 2008, and adjourn at 5 p.m. that day. The period from 2 p.m. to 4 p.m. on November 18, 2008, will be reserved for participation and presentations by members of the public.

ADDRESSES: The meetings will be held at the Hilton Omaha, 1001 Cast Street, Omaha, Nebraska 68102.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Members of the public not present may submit a written statement on or before November 13, 2008, to be included in the record of the meeting. Statements are to be submitted to Ms. Evangeline M. Campbell, Designated Federal Official (DFO), U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4209, Washington, DC 20210. Persons who need special accommodations should contact Mr. Craig Lewis at (202) 693–3384, at least two business days before the meeting.

The formal agenda will focus on the following topics: (1) USDOL/ETA Strategic Plan; (2) USDOL/ETA Transition; (3) USDOL, Indian and Native American Program Introduction of Newly Appointed Council Members; (4) USDOL, Indian and Native American Program Update and Strategic Planning; (5) USDOL, Indian and Native American Program Training and Technical Assistant Grant; (6) NAETC Workgroup Reports; (7) USDOL, Indian and Native American Program Reallocation Training and Employment Letter; and (8) Council Recommendations.

FOR FURTHER INFORMATION CONTACT: Ms. Evangeline M. Campbell, DFO, Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number (202) 693–3737 (VOICE) (this is not a toll-free number).

Signed at Washington, DC, this 28th day of October 2008.

Brent R. Orrell,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. E8–26208 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,958]

American Parts & Services, Inc.; Schaumburg, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application dated October 14, 2008, a company official 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 September 17, 2008, and published in the **Federal Register** on October 3, 2008 (73 FR 57682).

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 American Parts & Services, Inc., Schaumburg, Illinois, 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.

In the request for reconsideration the petitioner indicates a number of reasons as to why she should be eligible for TAA. In particular, the petitioner stated that the subject firm subcontracted independent workers to perform value added production functions on the parts purchased by the subject firm. The petitioner seems to allege that because the workers were sub-contracted to perform production for the subject firm, they should be considered as employees of the subject firm and, therefore, eligible for Trade Adjustment Assistance.

To determine whether these subcontracted workers were employees of the subject firm, on-site leased workers, or workers under the control of the subject firm and whether the worker group produced an article during the relevant period, the Department contacted the subject firm's company official and requested employment figures and all relevant contractual agreements between the subject firm and sub-contracting workers for the relevant employment data (for one year prior to the date of the petition).

The company official stated that the subcontractors utilized by the subject firm during the relevant period were not employees of American Parts & Services, Inc., Schaumburg, Illinois, and they were not leased workers employed on-site of the subject facility. Moreover, it was revealed that these independent contractors had no contractual agreements with the subject firm. The investigation revealed that there was only one worker employed by the subject firm in the relevant period.

A review of the initial petition and determination revealed the fact that the firm did not employ a worker group during the one year period prior to the petition filing date, as required by Section 222 of the Trade Act of 1974. A worker group means three or more workers in a firm or appropriate subdivision. The subject firm did not meet this threshold level. The investigation also revealed that the subject firm does not produce an article within the meaning of Section 222(a)(2) of the Act.

When assessing eligibility for TAA, the Department makes its determinations based on the requirements as outlined in Section 222 of the Trade Act. In particular, the Department defines an eligible worker ''group'' as ''three or more workers in a firm or an appropriate subdivision thereof.'' As subject firm's total worker number was one in the relevant period, the worker does not meet the group eligibility requirements for trade adjustment assistance.

After careful review of the information provided on reconsideration, it was revealed that American Parts & Services, Inc., Schaumburg, Illinois, resells parts for sheet metal equipment and subcontracts repair services. Moreover, a review of the records provided by the company official established that only one worker was employed by the subject firm during the relevant period.

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 22nd day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–26051 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,220]

Agrium U.S., Inc.; Kenai Nitrogen Operation Including On-Site Leased Workers From NMS (Nana Management Systems) Kenai, AK; Amended Notice of Revised Determination on Reconsideration

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 Notice of Revised Determination on Reconsideration on January 8, 2008. The notice was published in the **Federal Register** on January 16, 2008 (73 FR 2946).

At the request of the petitioner, the Department reviewed the Notice of Revised Determination on Reconsideration for workers of the subject firm. The workers are engaged in the production of anhydrous ammonia and urea.

New information shows that workers leased from NMS (Nana Management Systems) were employed on-site at the Kenai, Alaska location of Agrium U.S., Inc., Kenai Nitrogen Operation. The Department has determined that these workers were sufficiently under the control of Agrium U.S., Inc., Kenai Nitrogen Operation to be considered leased workers.

Based on these findings, the Department is amending this revised determination to include workers leased from NMS (Nana Management Systems) working on-site at the Kenai, Alaska location of the subject firm.

The intent of the Department's certification is to include all workers employed at Agrium U.S., Inc., Kenai Nitrogen Operation, Kenai, Alaska who were adversely affected by a shift in production of anhydrous ammonia and urea to Damietta, Egypt.

The amended notice applicable to TA–W–62,220 is hereby issued as follows:

All workers of Agrium U.S., Inc., Kenai Nitrogen Operation, including on-site leased workers from NMS (Nana Management Systems), Kenai, Alaska, who became totally

or partially separated from employment on or after April 13, 2007, through January 8, 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 22nd day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–26048 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,758]

Lear Corporation; Quality Control and Inspection Department; 950 Loma Verde Drive, El Paso, TX; Notice of Revised Determination on Reconsideration

On October 3, 2008, the Department issued an Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of Lear Corporation, Quality Control and Inspection Department, located at 950 Loma Verde Drive, El Paso, Texas (subject firm). The Department's Notice was published in the **Federal Register** on October 10, 2008 (73 FR 60338).

The negative determination was based on the Department's finding that the subject firm does not produce an article within the meaning of Section 222(a)(2) of the Act. Workers inspected wire harness component parts. The determination further stated that because the subject workers are denied eligibility to apply for trade adjustment assistance (TAA), the workers cannot be certified eligible for alternative trade adjustment assistance (ATAA).

In the request for reconsideration, the worker alleges that his work ''is directly involved in the manufacturing of the final product'' and that ''Lear Corporation took our jobs to Mexico.'' The worker also alleges that he is in the Product Part Approval Process Department, which is separate from the Quality Control and Inspection Department.

During the reconsideration investigation, the Department clarified with a subject human resource official that the worker group engaged in the Product Part Approval Process are part of the Quality Control and Inspection Department. Therefore, the Department determines that the initial identification of the subject worker group are workers of Lear Corporation, Quality Control and Inspection Department, located at 950 Loma Verde Drive, El Paso, Texas is correct.

A careful review of previously-submitted information during the reconsideration investigation revealed that a significant number or proportion of workers in the appropriate subdivision of the workers' firm have become totally or partially separated.

During the reconsideration investigation, the Department confirmed that the workers were engaged in the inspection of wire harness component parts and was also informed that the workers were engaged in the testing of those articles. The Department considers testing to be a production activity. As such, the Department determines that the subject workers are engaged in the production of wire harness component parts.

During the reconsideration investigation, the Department confirmed that the subject firm shifted wire harness component part production to an affiliated facility located in Mexico.

Based on the above, the Department determines that the group eligibility requirements in Section 222(a)(2)(B) of the Trade Act of 1974, as amended, have been met.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA.

The Department has determined in this case that the group eligibility requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained during the reconsideration investigation, I conclude that there was a shift in production from the workers' firm or subdivision to Mexico of articles that are like or directly competitive with those produced by the subject firm or subdivision.

In accordance with the provisions of the Act, I make the following certification:

''All workers of Lear Corporation, Quality Control and Inspection Department, 950 Loma Verde Drive, El Paso, Texas, who became totally or partially separated from employment on or after July 25, 2007 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 22nd day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–26050 Filed 10–31–08; 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 ''Necessary Project Components'' section.

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 03, in FR Doc. E8–8651. On page 57672, under the heading, ''Part I. Background Information'' specifically under paragraph ''4. Necessary Project Components.'' is amended to read: The minimum number of young parents the applicant must serve over the three year period of the grant is 100. These individuals must be new clients to the program. Because of the requirement of random assignment under the grant, 50 percent of the young parents would receive ''bump-up'' services under the grant and 50 percent of the young parents would receive control group services (50 treatment group members and 50 control group members given a program enrollment of 100). Please note that this number is a minimum, greater numbers are encouraged. Applicants must justify their existing program can serve this minimum number of individuals under the grant by describing their program enrollment size over the past 3–5 years. If the application does not propose serving at

least 100 individuals under this program, the application will not be considered.

DATES: *Effective Date:* This notice is effective November 3, 2008.

Signed at Washington, DC, this 27th day of October 2008.

James W. Stockton,

Grant Officer.

[FR Doc. E8–26057 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,242]

Emerald Kalama Chemical, LLC, Kalama, WA; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 17, 2008 in response to a worker petition filed on behalf of workers of Emerald Performance Materials, LLC, Kalama, Washington.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 23rd day of October 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–26045 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,182]

Fairmont Dairy, LLC; Belleville, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 8, 2008, in response to a petition filed by a company official on behalf of workers of Fairmont Dairy, LLC, Belleville, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of October 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–26055 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,210]

JDS Uniphase; Louisville, CO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 14, 2008 in response to a petition filed by a company official on behalf of workers of JDS Uniphase, Louisville, Colorado.

The Department has determined that this petition is a duplicate of petition number TA–W–64,132, instituted on September 30, 2008. The investigation of that petition is ongoing and determination has not yet been issued. Therefore, further investigation in the case would serve no purpose, and this investigation has been terminated.

Signed at Washington, DC, this 23rd day of October 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–26056 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,105]

Nana Management Services; Anchorage, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 24, 2008, in response to a worker petition filed by a company official on behalf of workers of Nana Management Services, Anchorage, Alaska.

The petitioning group of workers is covered by an active certification, (TA–W–62,220) which expires on January 8, 2010. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–26053 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,126]

Netshape Technologies, Inc.; Falls Creek, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 29, 2008 in response to a worker petition filed by a company official on behalf of workers of Netshape Technologies, Inc., Falls Creek, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of October 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–26054 Filed 10–31–08; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Audit Committee; Amended Notice; Change in Time at Which the Meeting Will Commence

NOTICE: The Legal Services Corporation (LSC) is announcing an amendment to the notice of the Board of Directors Audit Committee (Committee) meeting scheduled for Friday, October 31, 2008. The Committee meeting was announced in the **Federal Register** issue dated October 24, 2008, Volume 73, Number 207 (page 63515). The sole amendment to the notice is to the time at which the Committee's meeting will commence. Other than the change in start time from 2:30 p.m. to 2 p.m., there is no other change to the announcement cited above.

Meeting Schedule

Friday, October 31, 2008	Time
Audit Committee	2 p.m.[1]

[1] All times set forth in this notice are Mountain Time.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: October 29, 2008.

Victor M. Fortuno,

Vice President, General Counsel & Corporate Secretary.

[FR Doc. E8–26207 Filed 10–30–08; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (08–083)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a partially exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license to practice the invention described and claimed in NASA Case Number LAR–15602–1 entitled ''Passive Fetal Heart Monitoring System,'' U.S. Patent Number 6,749,573; LAR–15602–2 entitled ''Method for Simultaneously Making a Plurality of Acoustic Signal Sensor Elements,'' U.S. Patent Number 6,954,971; and LAR–15990–1 entitled ''Passive Fetal Heart Monitoring System,'' U.S. Patent Number 6,551,251 to Slingshot Product Development Group, having its principal place of business in Lawrenceville, Georgia. The field of use is limited to passive fetal heart monitoring systems. The patent rights have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, MS 141, Hampton, VA 23681; (757) 864–3221 (phone), (757) 864–9190 (fax).

FOR FURTHER INFORMATION CONTACT: Helen M. Galus, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 141, Hampton, VA 23681; (757) 864–3227; *Fax:* (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: October 29, 2008.

Michael C. Wholley,

General Counsel, Administration and Management.

[FR Doc. E8–26165 Filed 10–31–08; 8:45 am]

BILLING CODE 7510–13–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the National Council on the Humanities will meet in Washington, DC on November 13–14, 2008.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on November 13–14, 2008, will not be open to the public pursuant to subsections (c)(4),(c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on November 13, 2008 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9–10:30 a.m.
- Challenge Grants—Room 421
- Digital Humanities/Preservation and Access/Public Programs—Room 415
- Federal/State Partnership—Room 510A
- Research Programs—Room 315

(Closed to the Public)

Discussion of specific grant applications and programs before the Council

10:30 a.m. until Adjourned
- Challenge Grants—Room 421
- Digital Humanities/Preservation and Access/Public Programs—Room 415
- Federal/State Partnership—Room 510A
- Research Programs—Room 315

The morning session of the meeting on November 14, 2008 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting

B. Reports
1. Introductory Remarks.
2. Staff Report.
3. Congressional Report.
4. Budget Report.
5. Reports on Policy and General Matters.
   a. Challenge Grants
   b. Digital Humanities
   c. Preservation and Access
   d. Public Programs
   e. Federal/State Partnership
   f. Research Programs

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Michael McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E8–26097 Filed 10–31–08; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (#1171).

Date/Time: November 20, 2008; 8:30 a.m. to 5:30 p.m.; November 21, 2008; 8:30 a.m. to 11:45 a.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford I, Third Floor—Room 375, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Ms. Lisa Jones, Office of the Assistant Director, Directorate for Social, Behavioral, and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, Virginia 22230, 703–292–8700.

Summary of Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendation to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate programs and activities.

Agenda

Thursday

Updates and Discussions on Continuing Activities

CyberInfrastructure, Cyber-enabled Discovery and Innovation, and SBE Sciences

- Data: Massive data sets, data preservation, etc.
- Virtual organizations: For the SBE sciences and as a subject of SBE study
- Complexity sciences in SBE

Facilitating Transformative and Interdisciplinary Research

Science of Broadening Participation: Workshop Report

Update on SRS activities

Friday

Updates and Discussion on Continuing Activities

Upcoming Committees of Visitors

- SLC Program
- SRS Division
- BCS Division

Discussion with the NSF Director

Planning for FY 2010 and Beyond

Dated: October 29, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–26112 Filed 10–31–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Business and Operations Advisory Committee (9556).

Date/Time: November 19, 2008; 1 p.m. to 5:30 p.m. (EST); November 20, 2008; 8 a.m. to 12 p.m. (EST).

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford II, Room 555.

Type of Meeting: Open.

Contact Person: Joan Miller, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8200.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda

November 19, 2008

PM: Welcome/Introductions; OIRM/CIO/BFA Updates; NSF Policy Updates; Science of Science Innovation Policy (SciSIP); BFA Human Capital Strategic Plan Update; B&O Advisory Committee: Strategic Directions and Planning.

November 20, 2008

AM: Committee Discussion: Prepare for Meeting with NSF Director; Discussion with Director; Continue Strategy and Planning Discussion & Prepare Recommendations; Committee Discussion/Wrap-Up.

Dated: October 29, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–26111 Filed 10–31–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Granting Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Granting of Request To Extend the Comment Period of Draft Regulatory Guide (DG)–1200, ''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities.''

FOR FURTHER INFORMATION CONTACT: Mary Drouin, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6675 or e-mail to *Mary.Drouin@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) issued for public comment DG–1200, which was published in the **Federal Register** , 73 FR 35170, on June 20, 2008. DG–1200 is proposed Revision 2 of Regulatory Guide 1.200 in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

II. Further Information

The NRC staff requested receipt of comments on DG–1200 by September 24, 2008, (including any implementation schedule) and its associated regulatory analysis or value/impact statement. By this action, the NRC staff is extending the comment period until December 31, 2008. Comments received after December 31, 2008, would be considered if practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

III. Request To Extend the Comment Period

Basis for the Request

The NRC received the following extension request:

In a joint letter, the American Society of Mechanical Engineers (ASME) and the American Nuclear Society (ANS) requested that the public review and comment period on Draft Guide 1200 (proposed Revision 2 of Regulatory Guide [RG] 1.200) be extended to the end of December 2008 with a subsequent publication date of Revision 2 to RG 1.200 (''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities'') extended to the end of March 2009. The extension will allow Addendum A to the ''Standard for Level 1/Large Early Release Frequency Probabilistic Risk Assessment for Nuclear Power Plant Applications'' (ASME/ANS RA–S–2008) to be endorsed in Revision 2 to RG 1.200.

Response to Request

The request for an extension to the comment period is approved until December 31, 2008.

We agree that Addendum A is a needed improvement to the ASME/ANS standard RA-S–2008 and would result in a more effective and efficient implementation of both the standard and RG 1.200. Consequently, we are extending the public review and comment period to December 31, 2008, and the final publication of Revision 2 to RG 1.200 to March 31, 2009.

ASME and ANS have cooperated worked to develop this PRA standard in support of NRC's PRA quality initiative/plan in support of risk-informed regulation (SECY–04–0118, ''Plan for the Implementation of the Commission's Phased Approach to Probabilistic Risk Assessment Quality,'' dated July 13, 2004). This plan identified the various technical guidance documents (*e.g.* , standards) needed to support the various risk-informed activities.

Requests for technical information about DG–1200 may be directed to the NRC contact, Mary Drouin at (301) 415–6675 or e-mail to *Mary.Drouin@nrc.gov*.

Electronic copies of DG–1200 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html)*, under Accession No. ML081200566.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 29 day of October, 2008.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–26214 Filed 10–31–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–366]

Edwin I. Hatch Nuclear Plant, Unit No. 2; Southern Nuclear Operating Company, Inc.; Operating License No. NPF–5; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section 46, and Appendix K to Part 50, for Facility Operating License No. NPF–5, issued to Southern Nuclear Operating Company (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Unit 2 located in Appling County, Georgia. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the use of Ziron fuel cladding. The proposed action is in accordance with the licensee's application dated March 21, 2008, as supplemented May 2, August 8, and September 22, 2008.

The Need for the Proposed Action

The proposed action would allow a small number of lead test assemblies (LTAs) that will include some fuel rods manufactured with a cladding material, called GNF-Ziron, which is similar in composition to Zircaloy-2, but contains a slightly higher iron content than specified in ASTM B350. Irradiation of LTAs with GNF-Ziron fuel rods will enable SNC to acquire in-reactor operating experience with this material. Pursuant to 10 CFR 50.12, ''Specific Exemptions,'' the licensee has requested an exemption to 10 CFR 50.46, ''acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' that requires, among other items, that ''each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding, must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section.'' Appendix K to 10 CFR Part 50, ''ECCS Evaluation Models,'' requires, among other items, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation. The regulations at 10 CFR 50.46 and 10 CFR Part 50, Appendix K, make no provisions for use of fuel rods clad in a material other than zircaloy or ZIRLO. The proposed action would allow the licensee to irradiate a small number of LTAs using fuel rods clad with Ziron alloy in Hatch, Unit 2. Since the material specifications of the Ziron alloy differ from the specification for zircaloy or ZIRLO, a plant-specific exemption is required to support the use of the eight assemblies.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that application of 10 CFR 50.46, and Appendix K to 10 CFR Part 50, is not necessary for the licensee to achieve its underlying purposes.

The details of the NRC staff safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The staff has concluded that such a change would not adversely affect plant safety, and would have no adverse effect on the probability of any accident. For accidents that involve damage or melting of the fuel in the reactor core, the fuel rod integrity of GNF-Ziron cladded fuel has been shown to be similar to zircaloy cladded fuel; therefore, the probability of an accident will not be affected. For accidents in which the core remains intact, the use of GNF-Ziron cladding will not have a significant effect on the mix of fission products that could be released in the event of a serious accident; thus, the previously analyzed accident dose consequences remain bounding. Regulatory limits on radiological effluent releases are independent of the type of fuel cladding used. The requirements of 10 CFR 50.36a, Appendix I to 10 CFR Part 50, and 40 CFR Part 190, as well as the plant's Technical Specifications ensure that the release of radioactive gaseous, liquid, and solid waste to unrestricted areas are kept to ''as low as reasonably achievable'' (ALARA) levels. The licensee's radioactive waste processing system will collect, control, process to reduce the amount of radioactivity, and discharge the waste in accordance with regulatory limits. Therefore, the staff concluded that during routine operations, there will be no significant increase of radiological effluents released into the environment as a result of the proposed exemption request. No significant increase in the allowable individual occupational radiation

exposure will occur. The impact to workers is not expected to change because radiation exposure will be controlled in accordance with the licensee's radiation protection program, the ALARA program, in-plant shielding, the use of temporary shielding, and engineering controls. The use of GNF-Ziron fuel rods will not change the potential environmental impacts of incident-free transportation of spent nuclear fuel provided the shipping casks are maintained and transported within the Department of Transportation and NRC regulations. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in NUREG–1437, Supplement 4, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Supplement 4, Regarding the Edwin I. Hatch Nuclear Plant, Units 1 and 2,'' dated May 31, 2001.

Agencies and Persons Consulted

In accordance with its stated policy, on September 18, 2008, the NRC staff consulted with the Georgia State official, Mr. Jim Hardeman, of the Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated March 21, 2008, as supplemented May 2, August 8, and September 22, 2008. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (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 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of October, 2008.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–26133 Filed 10–31–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of November 3, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Additional Items To Be Considered

Week of November 3, 2008

Thursday, November 6, 2008

9:30 a.m.
Executive Branch Briefing (Closed—Ex. 1 & 9) (Tentative).

1:25 p.m.
Affirmation Session (Public Meeting) (Tentative).
b. AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station), Docket No. 50–219–LR, Citizens' Petition for Review of LBP–08–12 (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 29, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–26215 Filed 10–30–08; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58863; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 20 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis, Submitted by the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC., the Financial Industry Regulatory Authority, Inc., the National Stock Exchange, Inc., The NASDAQ Stock Market LLC, the New York Stock Exchange LLC, NYSE Arca, Inc., and the NASDAQ OMX PHLX, Inc.

October 27, 2008.

I. Introduction and Description

Pursuant to Rule 608 of the Securities Exchange Act of 1934 (the ''Act'') [1] notice is hereby given that on October 1, 2008, the operating committee (''Operating Committee'' or ''Committee'') [2] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq/UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') amendments to the Plan. These amendments represent Amendment 20 to the Plan and reflect: Modifying the name of the National Association of Securities Dealers and the Philadelphia Stock Exchange; adding BATS Exchange as a new Plan Participant; modifying Exhibit 1 to reflect changes to the Plan by Regulation NMS; and making ministerial changes to the text of the Plan. Amendment 20 was unanimously approved by the Committee on September 4, 2008.[3] The Commission is publishing this notice of filing and immediate effectiveness to solicit comments from interested persons on Amendment No. 20.

II. Background

The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities [4] for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities.[5]

III. Description and Purpose of the Amendment [6]

The following is a summary of the changes to the Plan prepared by the Participants:

(i) Section I.A. shall be amended to add the BATS Exchange, Inc. as a new Plan Participant, to change the name of the National Association of Securities Dealers to the Financial Industry Regulatory Authority, Inc., and to change the name of the Philadelphia Stock Exchange to Nasdaq OMX PHLX, Inc.

(ii) Section III shall be amended to reflect the name change from the National Association of Securities Dealers (''NASD'') to the Financial Industry Regulatory Authority, Inc. (''FINRA'').

(iii) Section IV.A shall be modified to reflect the participation of Advisory Committee members and to clarify that only Participants and their representatives as well as Commission staff may participate in Executive Sessions of the Operating Committee.

(iv) Section IV.C shall be modified to reflect the NASD name change to FINRA.

(v) Section VI.B shall be modified to eliminate language that is no longer relevant.

(vi) Section VI.C shall be modified to reflect the NASD name change to FINRA.

(vii) Section VIII. shall be modified to add the BATS Exchange as a new Participant, reflect the NASD name change as FINRA, and to modify the Philadelphia Stock Exchange name to Nasdaq OMX PHLX.

(viii) Section IX. shall be modified to eliminate vague language regarding market access and to reflect the NASD name change to FINRA.

(ix) Section X. shall be modified to clarify the language and make ministerial changes to the text.

(x) Section XI.D. shall be modified to reflect the NASD name change to FINRA.

(xi) Section XVIII.A shall be modified to correct a grammatical error.

(xii) The signature block shall be modified to add the BATS Exchange as a new Participant, to reflect the NASD name change as FINRA, and to modify the Philadelphia Stock Exchange name to Nasdaq OMX PHLX.

(xiii) Exhibit 1 shall be modified to reflect the NASD name change to FINRA and to be updated to reflect the Regulation NMS revenue formula.

IV. Date of Effectiveness of the Amendment

The changes set forth in Amendment No. 20 have been designated by the Participants as concerned solely with the administration of the plan or involving solely technical or ministerial matters, and thus are being put into effect upon filing with the Commission pursuant to Rules 608(b)(3)(ii) and 608(b)(3)(iii).[7] At any time within 60 days of the filing of any such amendment, the Commission may summarily abrogate the amendment and require that the amendment be refiled in accordance with paragraph (a)(1) of Rule 608 under the Act [8] and reviewed in accordance with paragraph (b)(2) of Rule 608 under the Act,[9] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.[10]

V. Solicitation of Comments

The Commission seeks general comments on Amendment No. 20. Interested persons are invited to submit

[1] 17 CFR 242.608.

[2] The Plan Participants (collectively, ''Participants'') are: the American Stock Exchange LLC (''Amex''); the Boston Stock Exchange, Inc. (''BSE''); the Chicago Stock Exchange, Incorporated (''CHX''); the Chicago Board Options Exchange, Inc. (''CBOE''); the International Securities Exchange, LLC (''ISE''); the Financial Industry Regulatory Authority, Inc. (''FINRA''); the National Stock Exchange, Inc. (''NSX''); The NASDAQ Stock Market LLC (''Nasdaq''); NASDAQ OMX PHLX, Inc. (''NASDAQ OMX PHLX''); the New York Stock Exchange, LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca'').

[3] *See* letter from Bridget F. Spaulding, Chairman, OTC/UTP Operating Committee, to Florence E. Harmon, Acting Secretary, Commission, dated September 8, 2008.

[4] The Plan defines ''Eligible Securities'' as any Nasdaq Global Market or Nasdaq Capital Market security, as defined in NASD Rule 4200.

[5] *See* Securities Exchange Act Release No. 55647 (April 19, 2007) 72 FR 20891 (April 26, 2007).

[6] The complete text of the Plan, as amended by Amendment No. 20, is attached as Exhibit A.

[7] 17 CFR 242.608(b)(3)(ii) and (b)(3)(iii).

[8] 17 CFR 242.608(a)(1).

[9] 17 CFR 242.608(b)(2).

[10] 17 CFR 242.608(b)(3)(iii).

written data, views, and arguments concerning the foregoing, including whether the proposal 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 S7–24–89 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 S7–24–89. 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 written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the Office of the Secretary of the Committee, currently located at NYSE Arca, Inc., 100 South Wacker Drive, Suite 1800, Chicago, IL 60606. 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 S7–24–89 and should be submitted on or before November 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

Exhibit A

Nasdaq UTP Plan

Amended and Restated Plan

Amendment No. 20

The undersigned registered national securities association and national securities exchanges (collectively referred to as the ''Participants''), have jointly developed and hereby enter into this Nasdaq Unlisted Trading Privileges Plan (''Nasdaq UTP Plan'' or ''Plan'').

I. Participants.

The Participants include the following:

A. Participants

1. American Stock Exchange LLC., 86 Trinity Place, New York, New York 10006.
2. BATS Exchange, Inc., 4151 North Mulberry Drive, Suite 275, Kansas City, Missouri 64116.
3. Boston Stock Exchange, 100 Franklin Street, Boston, Massachusetts 02110.
4. Chicago Stock Exchange, 440 South LaSalle Street, Chicago, Illinois 60605.
5. Chicago Board Options Exchange, Inc., 400 South LaSalle Street, 26th Floor, Chicago, Illinois 60605.
6. International Securities Exchange, LLC., 60 Broad Street, New York, New York 10004.
7. Financial Industry Regulatory Authority, Inc., 1735 K Street, NW., Washington, DC 20006.
8. National Stock Exchange, Inc., 440 South LaSalle Street, 26th Floor, Chicago, Illinois 60605.
9. New York Stock Exchange LLC., 11 Wall Street, New York, New York 10005.
10. NYSE Arca, Inc., 100 South Wacker Drive, Suite 1800, Chicago, IL 60606.
11. NASDAQ OMX PHLX, Inc., 1900 Market Street, Philadelphia, Pennsylvania 19103.
12. The NASDAQ Stock Market LLC., 1 Liberty Plaza, 165 Broadway, New York, NY 10006.

B. Additional Participants

Any other national securities association or national securities exchange, in whose market Eligible Securities become traded, may become a Participant, provided that said organization executes a copy of this Plan and pays its share of development costs as specified in section XIII.

II. Purpose of Plan

The purpose of this Plan is to provide for the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities from the Participants in a manner consistent with the Exchange Act.

It is expressly understood that each Participant shall be responsible for the collection of Quotation Information and Transaction Reports within its market and that nothing in this Plan shall be deemed to govern or apply to the manner in which each Participant does so.

III. Definitions

A. ''Current'' means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processor.

B. ''Eligible Security'' means any Nasdaq Global Market or Nasdaq Capital Market security, as defined in NASDAQ Rule 4200. Eligible Securities under this Nasdaq UTP Plan shall not include any security that is defined as an ''Eligible Security'' within Section VII of the Consolidated Tape Association Plan.

A security shall cease to be an Eligible Security for purposes of this Plan if: (i) the security does not substantially meet the requirements from time to time in effect for continued listing on Nasdaq, and thus is suspended from trading; or (ii) the security has been suspended from trading because the issuer thereof is in liquidation, bankruptcy or other similar type proceedings. The determination as to whether a security substantially meets the criteria of the definition of Eligible Security shall be made by the exchange on which such security is listed provided, however, that if such security is listed on more than one exchange, then such determination shall be made by the exchange on which the greatest number of the transactions in such security were effected during the previous twelve-month period.

C. ''Commission'' and ''SEC'' shall mean the U.S. Securities and Exchange Commission.

D. ''Exchange Act'' means the Securities Exchange Act of 1934.

E. ''Market'' shall mean (i) when used with respect to Quotation Information, FINRA in the case of a FINRA Participant, or the Participant on whose floor or through whose facilities the quotation was disseminated; and (ii)

[11] 17 CFR 200.30–3(a)(27).

when used with respect to Transaction Reports, the Participant through whose facilities the transaction took place or is reported, or the Participant to whose facilities the order was sent for execution.

F. ''FINRA'' means the Financial Industry Regulatory Authority, Inc.

G. ''FINRA Participant'' means a FINRA member that is registered as a market maker or an electronic communications network or otherwise utilizes the facilities of FINRA pursuant to applicable FINRA rules.

H. ''Transaction Reporting System'' means the System provided for in the Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule 11Aa3–1, subsequently re-designated as Rule 601 of Regulation NMS, governing the reporting of transactions in Nasdaq securities.

I. ''UTP Quote Data Feed'' means the service that provides Subscribers with the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities and, in the case of FINRA, the FINRA Participant(s) that constitute FINRA's Best Bid and Offer quotations.

J. ''Nasdaq System'' means the automated quotation system operated by Nasdaq.

K. ''UTP Trade Data Feed'' means the service that provides Vendors and Subscribers with Transaction Reports.

L. ''Nasdaq Security'' or ''Nasdaq-listed Security'' means any security listed on the Nasdaq Global Market or Nasdaq Capital Market.

M. ''News Service'' means a person that receives Transaction Reports or Quotation Information provided by the Systems or provided by a Vendor, on a Current basis, in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication at least fifteen (15) minutes following the time when the information first has been published by the Processor.

N. ''OTC Montage Data Feed'' means the data stream of information that provides Vendors and Subscribers with quotations and sizes from each FINRA Participant.

O. ''Participant'' means a registered national securities exchange or national securities association that is a signatory to this Plan.

P. ''Plan'' means this Nasdaq UTP Plan, as from time to time amended according to its provisions, governing the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities.

Q. ''Processor'' means the entity selected by the Participants to perform the processing functions set forth in the Plan.

R. ''Quotation Information'' means all bids, offers, displayed quotation sizes, the market center identifiers and, in the case of FINRA, the FINRA Participant that entered the quotation, withdrawals and other information pertaining to quotations in Eligible Securities required to be collected and made available to the Processor pursuant to this Plan.

S. ''Regulatory Halt'' means a trade suspension or halt called for the purpose of dissemination of material news, as described at Section X hereof or that is called for where there are regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue, including a trading halt for extraordinary market activity due to system misuse or malfunction under Section X.E.1. of the Plan (''Extraordinary Market Regulatory Halt'').

T. ''Subscriber'' means a person that receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, for its own use or for distribution on a non-Current basis, other than in connection with its activities as a Vendor.

U. ''Transaction Reports'' means reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities.

V. ''Upon Effectiveness of the Plan'' means July 12, 1993, the date on which the Participants commenced publication of Quotation Information and Transaction Reports on Eligible Securities as contemplated by this Plan.

W. ''Vendor'' means a person that receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a Current basis to Subscribers, News Services or other Vendors.

IV. Administration of Plan

A. Operating Committee: Composition

The Plan shall be administered by the Participants through an operating committee (''Operating Committee''), which shall be composed of one representative designated by each Participant. Each Participant may designate an alternate representative or representatives who shall be authorized to act on behalf of the Participant in the absence of the designated representative. Within the areas of its responsibilities and authority, decisions made or actions taken by the Operating Committee, directly or by duly delegated individuals, committees as may be established from time to time, or others, shall be binding upon each Participant, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or in any other appropriate forum.

An Electronic Communications Network, Alternative Trading System, Broker-Dealer or other securities organization (''Organization'') which is not a Participant, but has an actively pending Form 1 Application on file with the Commission to become a national securities exchange, will be permitted to appoint one representative and one alternate representative to attend regularly scheduled Operating Committee meetings in the capacity of an observer/advisor. If the Organization's Form 1 petition is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the Organization will no longer be eligible to be represented in the Operating Committee meetings. The Operating Committee shall have the discretion, in limited instances, to deviate from this policy if, as indicated by majority vote, the Operating Committee agrees that circumstances so warrant.

Nothing in this section or elsewhere within the Plan shall authorize any person or organization other than Participants, their representatives, and members of the Advisory Committee to participate on the Operating Committee in any manner other than as an advisor or observer. Only the Participants and their representatives as well as Commission staff may participate in Executive Sessions of the Operating Committee.

B. Operating Committee: Authority

The Operating Committee shall be responsible for:

1. Overseeing the consolidation of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to Vendors, Subscribers, News Services and others in accordance with the provisions of the Plan;

2. Periodically evaluating the Processor;

3. Setting the level of fees to be paid by Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan;

4. Determining matters involving the interpretation of the provisions of the Plan;

5. Determining matters relating to the Plan's provisions for cost allocation and revenue-sharing; and

6. Carrying out such other specific responsibilities as provided under the Plan.

C. Operating Committee: Voting

Each Participant shall have one vote on all matters considered by the Operating Committee.

1. The affirmative and unanimous vote of all Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Amendments to the Plan;

b. Amendments to contracts between the Processor and Vendors, Subscribers, News Services and others receiving Quotation Information and Transaction Reports in Eligible Securities;

c. Replacement of the Processor, except for termination for cause, which shall be governed by section V(B) hereof;

d. Reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities; and

e. Except as provided under section IV(C)(3) hereof, requests for system changes; and

f. All other matters not specifically addressed by the Plan.

2. With respect to the establishment of new fees or increases in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities, the affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee.

3. The affirmative vote of a majority of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Requests for system changes reasonably related to the function of the Processor as defined under the Plan. All other requests for system changes shall be governed by section IV(C)(1)(e) hereof.

b. Interpretive matters and decisions of the Operating Committee arising under, or specifically required to be taken by, the provisions of the Plan as written;

c. Interpretive matters arising under Rules 601 and 602 of Regulation NMS; and

d. Denials of access (other than for breach of contract, which shall be handled by the Processor),

4. It is expressly agreed and understood that neither this Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems. Nor shall the Plan or the Operating Committee have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Participant's marketplace, or, in the case of FINRA, from FINRA Participants.

D. Operating Committee: Meetings

Regular meetings of the Operating Committee may be attended by each Participant's designated representative and/or its alternate representative(s), and may be attended by one or more other representatives of the parties. Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee.

Quorum: Any action requiring a vote only can be taken at a meeting in which a quorum of all Participants is present. For actions requiring a simple majority vote of all Participants, a quorum of greater than 50% of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a ⅔ majority vote of all Participants, a quorum of at least ⅔ of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a unanimous vote of all Participants, a quorum of all Participants entitled to vote must be present at the meeting before such a vote may be taken.

A Participant is considered present at a meeting only if a Participant's designated representative or alternate representative(s) is either in physical attendance at the meeting or is participating by conference telephone, or other acceptable electronic means.

Any action sought to be resolved at a meeting must be sent to each Participant entitled to vote on such matter at least one week prior to the meeting via electronic mail, regular U.S. or private mail, or facsimile transmission, provided however that this requirement may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under section C above.

Any action may be taken without a meeting if a consent in writing, setting forth the action so taken, is sent to and signed by all Participant representatives entitled to vote with respect to the subject matter thereof. All the approvals evidencing the consent shall be delivered to the Chairman of the Operating Committee to be filed in the Operating Committee records. The action taken shall be effective when the minimum number of Participants entitled to vote have approved the action, unless the consent specifies a different effective date.

The Chairman of the Operating Committee shall be elected annually by and from among the Participants by a majority vote of all Participants entitled to vote. The Chairman shall designate a person to act as Secretary to record the minutes of each meeting. The location of meetings shall be rotated among the locations of the principal offices of the Participants, or such other locations as may from time to time be determined by the Operating Committee. Meetings may be held by conference telephone and action may be taken without a meeting if the representatives of all Participants entitled to vote consent thereto in writing or other means the Operating Committee deems acceptable.

E. Advisory Committee

(a) Formation. Notwithstanding any other provision of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(b) Composition. Members of the Advisory Committee shall be selected for two-year terms as follows:

(1) Operating Committee Selections. By affirmative vote of a majority of the Participants entitled to vote, the Operating Committee shall select at least one representative from each of the following categories to be members of the Advisory Committee: (i) A broker-dealer with a substantial retail investor customer base, (ii) a broker-dealer with a substantial institutional investor customer base, (iii) an alternative trade system, (iv) a data vendor, and (v) an investor.

(2) Participant Selections. Each Participant shall have the right to select one member of the Advisory Committee. A Participant shall not select any person employed by or affiliated with any participant or its affiliates or facilities.

(c) Function. Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall

include, but not be limited to, any new or modified product, fee, contract, or pilot program that is offered or used pursuant to the Plan.

(d) Meetings and Information. Members of the Advisory Committee shall have the right to attend all meetings of the Operating Committee and to receive any information concerning Plan matters that is distributed to the Operating Committee; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants entitled to vote, the Operating Committee determines that an item of Plan business requires confidential treatment.

V. Selection and Evaluation of the Processor

A. Generally

The Processor's performance of its functions under the Plan shall be subject to review by the Operating Committee at least every two years, or from time to time upon the request of any two Participants but not more frequently than once each year. Based on this review, the Operating Committee may choose to make a recommendation to the Participants with respect to the continuing operation of the Processor. The Operating Committee shall notify the SEC of any recommendations the Operating Committee shall make pursuant to the Operating Committee's review of the Processor and shall supply the Commission with a copy of any reports that may be prepared in connection therewith.

B. Termination of the Processor for Cause

If the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its reimbursable expenses have become excessive and are not justified on a cost basis, the Processor may be terminated at such time as may be determined by a majority vote of the Operating Committee.

C. Factors To Be Considered in Termination for Cause

Among the factors to be considered in evaluating whether the Processor has performed its functions in a reasonably acceptable manner in accordance with the provisions of the Plan shall be the reasonableness of its response to requests from Participants for technological changes or enhancements pursuant to section IV(C)(3) hereof. The reasonableness of the Processor's response to such requests shall be evaluated by the Operating Committee in terms of the cost to the Processor of purchasing the same service from a third party and integrating such service into the Processor's existing systems and operations as well as the extent to which the requested change would adversely impact the then current technical (as opposed to business or competitive) operations of the Processor.

D. Processor's Right To Appeal Termination for Cause

The Processor shall have the right to appeal to the SEC a determination of the Operating Committee terminating the Processor for cause and no action shall become final until the SEC has ruled on the matter and all legal appeals of right therefrom have been exhausted.

E. Process for Selecting New Processor

At any time following effectiveness of the Plan, but no later than upon the termination of the Processor, whether for cause pursuant to section IV(C)(1)(c) or V(B) of the Plan or upon the Processor's resignation, the Operating Committee shall establish procedures for selecting a new Processor (the ''Selection Procedures''). The Operating Committee, as part of the process of establishing Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Plan. The Selection Procedures shall be established by a two-thirds majority vote of the Plan Participants, and shall set forth, at a minimum:

1. The entity that will:

(a) Draft the Operating Committee's request for proposal for bids on a new processor;

(b) Assist the Operating Committee in evaluating bids for the new processor; and

(c) Otherwise provide assistance and guidance to the Operating Committee in the selection process.

2. The minimum technical and operational requirements to be fulfilled by the Processor;

3. The criteria to be considered in selecting the Processor; and

4. The entities (other than Plan Participants) that are eligible to comment on the selection of the Processor.

Nothing in this provision shall be interpreted as limiting Participants' rights under section IV or section V of the Plan or other Commission order.

VI. Functions of the Processor

A. Generally

The Processor shall collect from the Participants, and consolidate and disseminate to Vendors, Subscribers and News Services, Quotation Information and Transaction Reports in Eligible Securities in a manner designed to assure the prompt, accurate and reliable collection, processing and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner. The Processor shall commence operations upon the Processor's notification to the Participants that it is ready and able to commence such operations.

B. Collection and Consolidation of Information

For as long as Nasdaq is the Processor, the Processor shall be capable of receiving Quotation Information and Transaction Reports in Eligible Securities from Participants by the Plan-approved, Processor sponsored interface, and shall consolidate and disseminate such information via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to Vendors, Subscribers and News Services.

C. Dissemination of Information

The Processor shall disseminate consolidated Quotation Information and Transaction Reports in Eligible Securities via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to authorized Vendors, Subscribers and News Services in a fair and non-discriminatory manner. The Processor shall specifically be permitted to enter into agreements with Vendors, Subscribers and News Services for the dissemination of quotation or transaction information on Eligible Securities to foreign (non-U.S.) marketplaces or in foreign countries.

The Processor shall, in such instance, disseminate consolidated quotation or transaction information on Eligible Securities from all Participants. Nothing herein shall be construed so as to prohibit or restrict in any way the right of any Participant to distribute quotation, transaction or other information with respect to Eligible Securities quoted on or traded in its marketplace to a marketplace outside the United States solely for the purpose of supporting an intermarket linkage, or to distribute information within its own marketplace concerning Eligible Securities in accordance with its own format. If a Participant requests, the Processor shall make information about Eligible Securities in the Participant's marketplace available to a foreign marketplace on behalf of the requesting Participant, in which event the cost shall be borne by that Participant.

1. Best Bid and Offer

The Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the FINRA Participant(s) that constitute FINRA's single Best Bid and Offer quotations, and shall also calculate and disseminate on the UTP Quote Data Feed a national best bid and asked quotation with size based upon Quotation Information for Eligible Securities received from Participants. The Processor shall not calculate the best bid and offer for any individual Participant, including FINRA.

The Participant responsible for each side of the best bid and asked quotation making up the national best bid and offer shall be identified by an appropriate symbol. If the quotations of more than one Participant shall be the same best price, the largest displayed size among those shall be deemed to be the best. If the quotations of more than one Participant are the same best price and best displayed size, the earliest among those measured by the time reported shall be deemed to be the best. A reduction of only bid size and/or ask size will not change the time priority of a Participant's quote for the purposes of determining time reported, whereas an increase of the bid size and/or ask size will result in a new time reported. The consolidated size shall be the size of the Participant that is at the best.

If the best bid/best offer results in a locked or crossed quotation, the Processor shall forward that locked or crossed quote on the appropriate output lines (i.e., a crossed quote of bid 12, ask 11.87 shall be disseminated). The Processor shall normally cease the calculation of the best bid/best offer after 6:30 p.m., Eastern Time.

2. Quotation Data Streams

The Processor shall disseminate on the UTP Quote Data Feed a data stream of all Quotation Information regarding Eligible Securities received from Participants. Each quotation shall be designated with a symbol identifying the Participant from which the quotation emanates and, in the case of FINRA, the FINRA Participant(s) that constitute FINRA's Best Bid and Offer quotations. In addition, the Processor shall separately distribute on the OTC Montage Data Feed the Quotation Information regarding Eligible Securities from all FINRA Participants from which quotations emanate.

3. Transaction Reports

The Processor shall disseminate on the UTP Trade Data Feed a data stream of all Transaction Reports in Eligible Securities received from Participants. Each transaction report shall be designated with a symbol identifying the Participant in whose Market the transaction took place.

D. Closing Reports

At the conclusion of each trading day, the Processor shall disseminate a ''closing price'' for each Eligible Security. Such ''closing price'' shall be the price of the last Transaction Report in such security received prior to dissemination. The Processor shall also tabulate and disseminate at the conclusion of each trading day the aggregate volume reflected by all Transaction Reports in Eligible Securities reported by the Participants.

E. Statistics

The Processor shall maintain quarterly, semi-annual and annual transaction and volume statistical counts. The Processor shall, at cost to the user Participant(s), make such statistics available in a form agreed upon by the Operating Committee, such as a secure Web site.

VII. Administrative Functions of the Processor

Subject to the general direction of the Operating Committee, the Processor shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in this Plan, including, but not limited to, record keeping, billing, contract administration, and the preparation of financial reports.

VIII. Transmission of Information to Processor by Participants

A. Quotation Information

Each Participant shall, during the time it is open for trading be responsible promptly to collect and transmit to the Processor accurate Quotation Information in Eligible Securities through any means prescribed herein.

Quotation Information shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;
2. The price bid and offered, together with size;
3. The FINRA Participant along with the FINRA Participant's market participant identification or Participant from which the quotation emanates;
4. Identification of quotations that are not firm; and
5. Through appropriate codes and messages, withdrawals and similar matters.

B. Transaction Reports

Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein. With respect to orders sent by one Participant Market to another Participant Market for execution, each Participant shall adopt procedures governing the reporting of transactions in Eligible Securities specifying that the transaction will be reported by the Participant whose member sold the security. This provision shall apply only to transactions between Plan Participants.

Transaction Reports shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;
2. The number of shares in the transaction;
3. The price at which the shares were purchased or sold;
4. The buy/sell/cross indicator;
5. The Market of execution; and,
6. Through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

All such Transaction Reports shall be transmitted to the Processor within 90 seconds after the time of execution of the transaction. Transaction Reports transmitted beyond the 90-second period shall be designated as ''late'' by the appropriate code or message.

The following types of transactions are not required to be reported to the Processor pursuant to the Plan:

1. Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;
2. Transactions made in reliance on section 4(2) of the Securities Act of 1933;
3. Transactions in which the buyer and the seller have agreed to trade at a price unrelated to the Current Market for the security, e.g., to enable the seller to make a gift;
4. Odd-lot transactions;
5. The acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;
6. Purchases of securities pursuant to a tender offer; and
7. Purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the Current Market.

C. Symbols for Market Identification for Quotation Information and Transaction Reports

The following symbols shall be used to denote the marketplaces:

Code	Participant
A	American Stock Exchange LLC
Z	BATS Exchange, Inc.
B	Boston Stock Exchange, Inc.
W	Chicago Board Options Exchange, Inc.
M	Chicago Stock Exchange, Inc.
I	International Securities Exchange, LLC
D	Financial Industry Regulatory Authority, Inc.
Q	Nasdaq Stock Market LLC
C	National Stock Exchange, Inc.
N	New York Stock Exchange LLC
P	NYSE Arca, Inc.
X	Nasdaq OMX PHLX, Inc.

D. Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, the Participant shall promptly notify the Processor of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

IX. Market Access

Pursuant to the requirements of Rule 610 of Regulation NMS, a Participant that operates an SRO trading facility shall provide for fair and efficient order execution access to quotations in each Eligible Security displayed through its trading facility. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting quotations through such SRO display-only quotation facility must provide for fair and efficient order execution access to quotations in each Eligible Security displayed through the SRO display-only quotation facility. A Participant that operates an SRO trading facility may elect to allow such access to its quotations through the utilization of private electronic linkages between the Participant and other trading centers. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting quotations through such SRO display-only quotation facility may elect to allow such access to their quotations through the utilization of private electronic linkages between the trading center and SRO trading facilities of Plan Participants and/or other trading centers.

In accordance with Regulation NMS, a Participant shall not impose, or permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the Participant or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security or against any other quotation displayed by the Participant in an Eligible Security that is the Participant's displayed best bid or offer for that Eligible Security, where such fee or fees exceed the limits provided for in Rule 610(c) of Regulation NMS. As required under Regulation NMS, the terms of access to a Participant's quotations or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security may not be unfairly discriminatory so as to prevent or inhibit any person from obtaining efficient access to such displayed quotations through a member of the Participant or a subscriber of a trading center.

If quotations in an Eligible Security are displayed by a Participant that operates an SRO trading facility (or are displayed by a trading center that posts quotations through an SRO display-only quotation facility) that complies with the fair and efficient access requirements of Regulation NMS (an ''NMS Compliant Facility''), including prior to the compliance date of such access requirements, that Participant (or trading center posting quotes through an SRO display-only quotation facility) shall no longer be required to permit each FINRA market participant to have direct telephone access to the specialist, trading post, market maker and supervisory center in such Eligible Security that trades on that NMS Compliant Facility. For quotations in Eligible Securities that are displayed by a Participant that operates an SRO trading facility that is not an NMS Compliant Facility, such telephone access requirement will continue to be applicable to the Participant.

X. Regulatory Halts

A. Whenever, in the exercise of its regulatory functions, the Listing Market for an Eligible Security determines that a Regulatory Halt is appropriate pursuant to section III.S, the Listing Market will notify all other Participants pursuant to section X.E and all other Participants shall also halt or suspend trading in that security until notified that the halt or suspension is no longer in effect. The Listing Market shall immediately notify the Processor of such Regulatory Halt as well as provide notice that a Regulatory Halt has been lifted. The Processor, in turn, shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a Regulatory Halt) through the UTP Quote Data Feed. This notice shall serve as official notice of a Regulatory Halt for purposes of the Plan only, and shall not substitute or otherwise supplant notice that a Participant may recognize or require under its own rules. Nothing in this provision shall be read so as to supplant or be inconsistent with a Participant's own rules on trade halts, which rules apply to the Participant's own members. The Processor will reject any quotation information or transaction reports received from any Participant on an Eligible Security that has a Regulatory Halt in effect.

B. Whenever the Listing Market determines that an adequate publication or dissemination of information has occurred so as to permit the termination of the Regulatory Halt then in effect, the Listing Market shall promptly notify the Processor and each of the other Participants that conducts trading in such security pursuant to Section X.F. Except in extraordinary circumstances, adequate publication or dissemination shall be presumed by the Listing Market to have occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to the Regulatory Halt.

C. Except in the case of a Regulatory Halt, the Processor shall not cease the dissemination of quotation or transaction information regarding any Eligible Security. In particular, it shall not cease dissemination of such information because of a delayed opening, imbalance of orders or other market-related problems involving such security. During a Regulatory Halt, the Processor shall collect and disseminate Transaction Information but shall cease collection and dissemination of all Quotation Information.

D. For purposes of this section X, ''Listing Market'' for an Eligible Security means the Participant's Market on which the Eligible Security is listed. If an Eligible Security is dually listed, Listing Market shall mean the Participant's Market on which the Eligible Security is listed that also has

the highest number of the average of the reported transactions and reported share volume for the preceding 12-month period. The Listing Market for dually-listed Eligible Securities shall be determined at the beginning of each calendar quarter.

E. For purposes of coordinating trading halts in Eligible Securities, all Participants are required to utilize the national market system communication media (''Hoot-n-Holler'') to provide real-time information to all Participants. Each Participant shall be required to continuously monitor the Hoot-n-Holler system during market hours, and the failure of a Participant to do so at any time shall not prevent the Listing Market from initiating a Regulatory Halt in accordance with the procedures specified herein.

1. The following procedures shall be followed when one or more Participants experiences extraordinary market activity in an Eligible Security that is believed to be caused by the misuse or malfunction of systems operated by or linked to one or more Participants.

a. The Participant(s) experiencing the extraordinary market activity or any Participant that becomes aware of extraordinary market activity will immediately use best efforts to notify all Participants of the extraordinary market activity utilizing the Hoot-n-Holler system.

b. The Listing Market will use best efforts to determine whether there is material news regarding the Eligible Security. If the Listing Market determines that there is non-disclosed material news, it will immediately call a Regulatory Halt pursuant to section X.E.2.

c. Each Participant(s) will use best efforts to determine whether one of its systems, or the system of a direct or indirect participant in its market, is responsible for the extraordinary market activity.

d. If a Participant determines the potential source of extraordinary market activity pursuant to section X.1.c., the Participant will use best efforts to determine whether removing the quotations of one or more direct or indirect market participants or barring one or more direct or indirect market participants from entering orders will resolve the extraordinary market activity. Accordingly, the Participant will prevent the quotations from one or more direct or indirect market participants in the affected Eligible Securities from being transmitted to the Processor.

e. If the procedures described in section X.E.1.a–d. do not rectify the situation, the Participant(s) experiencing extraordinary market activity will cease transmitting all quotations in the affected Eligible Securities to the Processor.

f. If the procedures described in section X.E.1.a–e. do not rectify the situation within five minutes of the first notification through the Hoot-n-Holler system, or if Participants agree to call a halt sooner through unanimous approval among those Participants actively trading impacted Eligible Securities, the Listing Market may determine based on the facts and circumstances, including available input from Participants, to declare an Extraordinary Market Regulatory Halt in the affected Eligible Securities. Simultaneously with the notification of the Processor to suspend the dissemination of quotations across all Participants, the Listing Market must notify all Participants of the trading halt utilizing the Hoot-n-Holler system.

g. Absent any evidence of system misuse or malfunction, best efforts will be used to ensure that trading is not halted across all Participants.

2. If the Listing Market declares a Regulatory Halt in circumstances other than pursuant to section X.E.1.f., the Listing Market must, simultaneously with the notification of the Processor to suspend the dissemination of quotations across all Participants, notify all Participants of the trading halt utilizing the Hoot-n-Holler system.

F. If the Listing Market declares a Regulatory Halt, trading will resume according to the following procedures:

1. Within 15 minutes of the declaration of the halt, all Participants will make best efforts to indicate via the Hoot-n-Holler their intentions with respect to canceling or modifying transactions.

2. All Participants will disseminate to their members information regarding the canceled or modified transactions as promptly as possible, and in any event prior to the resumption of trading.

3. After all Participants have met the requirements of section X.F.1–2, the Listing Market will notify the Participants utilizing the Hoot-n-Holler and the Processor when trading may resume. Upon receiving this information, Participants may commence trading pursuant to section X.A.

XI. Hours of Operation

A. Quotation Information may be entered by Participants as to all Eligible Securities in which they make a market between 9:30 a.m. and 4 p.m. Eastern Time (''ET'') on all days the Processor is in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:01:30 p.m. ET by Participants as to all Eligible Securities in which they execute transactions between 9:30 a.m. and 4 p.m. ET on all days the Processor is in operation.

B. Participants that execute transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4 p.m., ET, shall report such transactions as follows:

(i) Transactions in Eligible Securities executed between 4 a.m. and 9:29:59 a.m. ET and between 4:00:01 and 8 p.m. ET, shall be designated as ''.T'' trades to denote their execution outside normal market hours;

(ii) Transactions in Eligible Securities executed after 8 p.m. and before 12 a.m. (midnight) shall be reported to the Processor between the hours of 4 a.m. and 8 p.m. ET on the next business day (T+1), and shall be designated ''as/of'' trades to denote their execution on a prior day, and be accompanied by the time of execution;

(iii) Transactions in Eligible Securities executed between 12 a.m. (midnight) and 4 a.m. ET shall be transmitted to the Processor between 4 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ''.T'' trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution;

(iv) Transactions reported pursuant to this provision of the Plan shall be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but shall not be included in the calculation of the daily high, low, or last sale.

C. Late trades shall be reported in accordance with the rules of the Participant in whose Market the transaction occurred and can be reported between the hours of 4 a.m. and 8 p.m.

D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 4 a.m. and 9:30 a.m. ET, and after 4 p.m. ET, when any Participant or FINRA Participant is open for trading, until 8 p.m. ET (the ''Additional Period''); provided, however, that the national best bid and offer quotation will not be disseminated before 4 a.m. or after 8 p.m. ET. Participants that enter Quotation Information or submit Transaction Reports to the Processor during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

XII. Undertaking by All Participants

The filing with and approval by the Commission of this Plan shall obligate each Participant to enforce compliance by its members with the provisions

thereof. In all other respects not inconsistent herewith, the rules of each Participant shall apply to the actions of its members in effecting, reporting, honoring and settling transactions executed through its facilities, and the entry, maintenance and firmness of quotations to ensure that such occurs in a manner consistent with just and equitable principles of trade.

XIII. Financial Matters

A. Development Costs

Any Participant becoming a signatory to this Plan after June 26, 1990, shall, as a condition to becoming a Participant, pay to the other Plan Participants a proportionate share of the aggregate development costs previously paid by Plan Participants to the Processor, which aggregate development costs totaled $439,530, with the result that each Participant's share of all development costs is the same.

Each Participant shall bear the cost of implementation of any technical enhancements to the Nasdaq system made at its request and solely for its use, subject to reapportionment should any other Participant subsequently make use of the enhancement, or the development thereof.

B. Cost Allocation and Revenue Sharing

The provisions governing cost allocation and revenue sharing among the Participants are set forth in Exhibit 1 to the Plan.

C. Maintenance of Financial Records

The Processor shall maintain records of revenues generated and development and operating expenditures incurred in connection with the Plan. In addition, the Processor shall provide the Participants with: (a) A statement of financial and operational condition on a quarterly basis; and (b) an audited statement of financial and operational condition on an annual basis.

XIV. Indemnification

Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq, and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor by such Participant and disseminated by the Processor to Vendors. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.

Promptly after receipt by an indemnified Participant of notice of the commencement of any action, such indemnified Participant will, if a claim in respect thereof is to be made against an indemnifying Participant, notify the indemnifying Participant in writing of the commencement thereof; but the omission to so notify the indemnifying Participant will not relieve the indemnifying Participant from any liability which it may have to any indemnified Participant. In case any such action is brought against any indemnified Participant and it promptly notifies an indemnifying Participant of the commencement thereof, the indemnifying Participant will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying Participant similarly notified, to assume and control the defense thereof with counsel chosen by it. After notice from the indemnifying Participant of its election to assume the defense thereof, the indemnifying Participant will not be liable to such indemnified Participant for any legal or other expenses subsequently incurred by such indemnified Participant in connection with the defense thereof but the indemnified Participant may, at its own expense, participate in such defense by counsel chosen by it without, however, impairing the indemnifying Participant's control of the defense. The indemnifying Participant may negotiate a compromise or settlement of any such action, provided that such compromise or settlement does not require a contribution by the indemnified Participant.

XV. Withdrawal

Any Participant may withdraw from the Plan at any time on not less than 30 days prior written notice to each of the other Participants. Any Participant withdrawing from the Plan shall remain liable for, and shall pay upon demand, any fees for equipment or services being provided to such Participant pursuant to the contract executed by it or an agreement or schedule of fees covering such then in effect.

A withdrawing Participant shall also remain liable for its proportionate share, without any right of recovery, of administrative and operating expenses, including start-up costs and other sums for which it may be responsible pursuant to section XIV hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

XVI. Modifications to Plan

The Plan may be modified from time to time when authorized by the agreement of all of the Participants, subject to the approval of the SEC or which otherwise becomes effective pursuant to section 11A of the Act and Rule 608 of Regulation NMS.

XVII. Applicability of Securities Exchange Act of 1934

The rights and obligations of the Participants and of Vendors, News Services, Subscribers and other persons contracting with Participant in respect of the matters covered by the Plan shall at all times be subject to any applicable provisions of the Act, as amended, and any rules and regulations promulgated thereunder.

XVIII. Operational Issues

A. Each Participant shall be responsible for collecting and validating quotes and last sale reports within its own system prior to transmitting this data to the Processor.

B. Each Participant may utilize a dedicated Participant line into the Processor to transmit trade and quote information in Eligible Securities to the Processor. The Processor shall accept from Exchange Participants input for only those issues that are deemed Eligible Securities.

C. The Processor shall consolidate trade and quote information from each Participant and disseminate this information on the Processor's existing vendor lines.

D. The Processor shall perform gross validation processing for quotes and last sale messages in addition to the collection and dissemination functions, as follows:

1. Basic Message Validation

(a) The Processor may validate format for each type of message, and reject non-conforming messages.

(b) Input must be for an Eligible Security.

2. Logging Function—The Processor shall return all Participant input messages that do not pass the validation checks (described above) to the inputting Participant, on the entering Participant line, with an appropriate reject notation. For all accepted Participant input messages (i.e., those that pass the validation check), the information shall be retained in the Processor system.

XIX. Headings

The section and other headings contained in this Plan are for reference

purposes only and shall not be deemed to be a part of this Plan or to affect the meaning or interpretation of any provisions of this Plan.

XX. Counterparts

This Plan may be executed by the Participants in any number of counterparts, no one of which need contain the signature of all Participants. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

XXI. Depth of Book Display

The Operating Committee has determined that the entity that succeeds Nasdaq as the Processor should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the best bid and best offer from any Participant that voluntarily chooses to submit such quotations while determining that no Participant shall be required to submit such information. The Operating Committee has further determined that the costs of developing, collecting, processing, and disseminating such depth of book data shall be borne exclusively by those Participants that choose to submit this information to the Processor, by whatever allocation those Participants may choose among themselves. The Operating Committee has determined further that the primary purpose of the Processor is the collection, processing and dissemination of best bid, best offer and last sale information (''core data''), and as such, the Participants will adopt procedures to ensure that such functionality in no way hinders the collecting, processing and dissemination of this core data.

Therefore, implementing the depth of book display functionality will require a plan amendment that addresses all pertinent issues, including:

(1) Procedures for ensuring that the fully-loaded cost of the collection, processing, and dissemination of depth-of-book information will be tracked and invoiced directly to those Plan Participants that voluntarily choose to send that data, voluntarily, to the Processor allocating in whatever manner those Participants might agree; and

(2) Necessary safeguards the Processor will take to ensure that its processing of depth-of-book data will not impede or hamper, in any way, its core Processor functionality of collecting, consolidating, and disseminating National Best Bid and Offer data, exchange best bid and offer data, and consolidated last sale data.

Upon approval of a Plan amendment implementing depth of book display, this article of the Plan shall be automatically deleted.

In witness whereof, this Plan has been executed as of the ____ day of ____, 200__, by each of the Signatories hereto.

American Stock Exchange LLC
By: _____

Boston Stock Exchange, Inc.
By: _____

Chicago Board Options Exchange, LLC
By: _____

International Securities Exchange, Inc.
By: _____

FINRA
By: _____

National Stock Exchange, Inc.
By: _____

New York Stock Exchange LLC
By: _____

NYSE ARCA, Inc.
By: _____

NASDAQ OMX PHLX, Inc.
By: _____

Bats Exchange, Inc.
By: _____

Chicago Stock Exchange, Inc.
By: _____

The Nasdaq Stock Market LLC
By: _____

Exhibit 1

1. Each Participant eligible to receive revenue under the Plan will receive an annual payment for each calendar year that is equal to the sum of the Participant's Trading Shares and Quoting Shares, as defined below, in each Eligible Security for the calendar year. In the event that total net distributable operating income (as defined below) is negative, each Participant eligible to receive revenue under the Plan will receive an annual bill for each calendar year to be determined according to the same formula (described in this paragraph) for determining annual payments to eligible Participants. Unless otherwise stated in this agreement, a year shall run from January 1 to December 31 and quarters shall end on March 31, June 30, September 30, and December 31. Processor shall endeavor to provide Participants with written estimates of each Participant's percentage of total volume within five business days of month end.

2. Security Income Allocation. The Security Income Allocation for an Eligible Security shall be determined by multiplying (i) the ''net distributable operating income'' of this Nasdaq UTP Plan for the calendar year by (ii) the Volume Percentage for such Eligible Security (the ''initial allocation''), and then adding or subtracting any amounts specified in the reallocation set forth below. The Volume Percentage for an Eligible Security shall be determined by dividing (A) the square root of the dollar volume of transaction reports disseminated by the Processor in such Eligible Security during the calendar year by (B) the sum of the square roots of the dollar volume of transaction reports disseminated by the Processor in each Eligible Security during the calendar year. If the initial allocation of net distributable operating income in accordance with the Volume Percentage of an Eligible Security equals an amount greater than $4.00 multiplied by the total number of qualified transaction reports in such Eligible Security during the calendar year, the excess amount shall be subtracted from the initial allocation for such Eligible Security and reallocated among all Eligible Securities in direct proportion to the dollar volume of transaction reports disseminated by the Processor in Eligible Securities during the calendar year. A transaction report with a dollar volume of $5000 or more shall constitute one qualified transaction report. A transaction report with a dollar volume of less than $5000 shall constitute a fraction of a qualified transaction report that equals the dollar volume of the transaction report divided by $5000.

3. Trading Share. The Trading Share of a Participant in an Eligible Security shall be determined by multiplying (i) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (ii) the Participant's Trade Rating in the Eligible Security. A Participant's Trade Rating in an Eligible Security shall be determined by taking the average of (A) the Participant's percentage of the total dollar volume of transaction reports disseminated by the Processor in the Eligible Security during the calendar year, and (B) the Participant's percentage of the total number of qualified transaction reports disseminated by the Processor in the Eligible Security during the calendar year.

4. Quoting Share. The Quoting Share of a Participant in an Eligible Security shall be determined by multiplying (A) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (B) the Participant's Quote Rating in the Eligible Security. A Participant's Quote Rating in an Eligible Security shall be determined by dividing (A) the sum of the Quote Credits earned by the Participant in such Eligible Security during the calendar year by (B) the sum of the Quote Credits earned by all Participants in such Eligible Security during the

calendar year. A Participant shall earn one Quote Credit for each second of time (with a minimum of one full second) multiplied by dollar value of size that an automated best bid (offer) transmitted by the Participant to the Processor during regular trading hours is equal to the price of the national best bid (offer) in the Eligible Security and does not lock or cross a previously displayed automated quotation. An automated bid (offer) shall have the meaning specified in Rule 600 of Regulation NMS of the Act for an ''automated quotation.'' The dollar value of size of a quote shall be determined by multiplying the price of a quote by its size.

5. For purposes of this Exhibit 1, net distributable operating income for any particular calendar year shall be calculated by adding all revenues from the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed including revenues from the dissemination of information respecting Eligible Securities to foreign marketplaces (collectively, ''the Data Feeds''), and subtracting from such revenues the costs incurred by the Processor, set forth below, in collecting, consolidating, validating, generating, and disseminating the Data Feeds. These costs include, but are not limited to, the following:

a. The Processor costs directly attributable to creating OTC Montage Data Feed, including:

1. Cost of collecting Participant quotes into the Processor's quote engine;

2. Cost of processing quotes and creating OTC Montage Data Feed messages within the Processor's quote engine;

3. Cost of the Processor's communication management subsystem that distributes OTC Montage Data Feed to the market data vendor network for further distribution.

b. The costs directly attributable to creating the UTP Quote Data Feed, including:

1. The costs of collecting each Participant's best bid, best offer, and aggregate volume into the Processor's quote engine and, in the case of FINRA, the costs of identifying the FINRA Participant(s) that constitute FINRA's Best Bid and Offer quotations;

2. Cost of calculating the national best bid and offer price within the Processor's quote engine;

3. Cost of creating the UTP Quote Data Feed message within the Processor's quote engine;

4. Cost of the Processor's communication management subsystem that distributes the UTP Quote Data Feed to the market data vendors' networks for further distribution.

c. The costs directly attributable to creating the UTP Trade Data Feed, including:

1. The costs of collecting each Participant's last sale and volume amount into the Processor's quote engine;

2. Cost of determining the appropriate last sale price and volume amount within the Processor's trade engine;

3. Cost of utilizing the Processor's trade engine to distribute the UTP Trade Data Feed for distribution to the market data vendors;

4. Cost of the Processor's communication management subsystem that distributes the UTP Trade Data Feed to the marker data vendors' networks for further distribution.

d. The additional costs that are shared across all Data Feeds, including:

1. Telecommunication Operations costs of supporting the Participant lines into the Processor's facilities;

2. Telecommunications Operations costs of supporting the external market data vendor network;

3. Data Products account management and auditing function with the market data vendors;

4. Market Operations costs to support symbol maintenance, and other data integrity issues;

5. Overhead costs, including management support of the Processor, Human Resources, Finance, Legal, and Administrative Services; and

6. Costs of establishing and supporting the Security Income Allocation System.

e. Processor costs excluded from the calculation of net distributable operating income include trade execution costs for transactions executed using a Nasdaq service and trade report collection costs reported through a Nasdaq service, as such services are market functions for which Participants electing to use such services pay market rate.

f. For the purposes of this provision, the following definitions shall apply:

1. ''*Quote Engine*'' shall mean the Nasdaq's NT or Tandem system that is operated by Nasdaq to collect quotation information for Eligible Securities;

2. ''*Trade Engine*'' shall mean the Nasdaq Tandem system that is operated by Nasdaq for the purpose of collecting last sale information in Eligible Securities.

6. At the time a Participant implements a Processor-approved electronic interface with the Processor, the Participant will become eligible to receive revenue.

7. Processor shall endeavor to provide Participants with written estimates of each Participant's quarterly net distributable operating income within 45 calendar days of the end of the quarter, and estimated quarterly payments or billings shall be made on the basis of such estimates. All quarterly payments or billings shall be made to each eligible Participant within 45 days following the end of each calendar quarter in which the Participant is eligible to receive revenue, provided that each quarterly payment or billing shall be reconciled against a Participant's cumulative year-to-date payment or billing received to date and adjusted accordingly, and further provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Monthly interest shall start accruing 45 days following the month in which it is earned and accrue until the date on which the payment is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants a quarterly itemized statement setting forth the basis upon which net operating income was calculated, including a quarterly itemized statement of the Processor costs set forth in Paragraph 3 of this Exhibit. Such Processor costs and Plan revenues shall be adjusted annually based solely on the Processor's quarterly itemized statement audited pursuant to Processor's annual audit. Processor shall pay or bill Participants for the audit adjustments within thirty days of completion of the annual audit. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

[FR Doc. E8–26108 Filed 10–31–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58871; File No. SR–BATS–2008–009]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Fees for Use of BATS Exchange

October 28, 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 21, 2008, BATS Exchange, Inc. (''BATS'' 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to implement a fee schedule applicable to use of the Exchange commencing on the date it begins operating as a national securities exchange. The Exchange currently intends to commence operations as a national securities exchange on October 24, 2008.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 Exchange proposes to implement a fee schedule applicable to use of the Exchange commencing on the date it begins operating as a national securities exchange. The Exchange currently intends to commence operations as a national securities exchange on October 24, 2008. Please find below a description of the fees and rebates that the Exchange intends to impose under the initial, proposed fee schedule.

The Exchange does not propose to charge different fees or grant different rebates depending on the amount of orders submitted to, and/or trades executed on or through, the Exchange. Accordingly, all fees and rebates described below are applicable to all Members,[5] regardless of the overall volume of their trading activities on the Exchange.

(i) *Standard Fees for Removing Liquidity.*

The Exchange is proposing to charge $0.0025 per share for executions that remove liquidity from the Exchange, with the exception of executions that remove non-displayed liquidity and securities priced under $1.00 per share, as described below. The charge for removing liquidity will apply to securities traded on the Exchange pursuant to unlisted trading privileges that are listed on: (A) The New York Stock Exchange (''NYSE''); (B) regional exchanges, such as NYSE Arca Equities (''NYSE Arca'') and NYSE Alternext US (''NYSE Alternext,'' formerly the American Stock Exchange); and (C) the NASDAQ Stock Market (''NASDAQ'') (''Tape A Securities'', ''Tape B Securities'' and ''Tape C Securities'', respectively, and collectively, ''All Tapes'').

(ii) *Standard Rebates for Adding Liquidity.*

With the exception of executions that result from non-displayed orders and securities priced under $1.00 per share, as described below, the Exchange is proposing to rebate: (A) $0.0030 per share for executions that add liquidity to the Exchange in Tape B Securities; and (B) $0.0024 per share for executions that add liquidity to the Exchange in Tape A Securities and Tape C Securities.

(iii) *Securities Priced under $1.00 per Share.*

In connection with executions in securities priced under $1.00 per share, the Exchange does not propose to charge any fee or to provide any rebates to Members.

(iv) *Routing Charges.*

The Exchange proposes to charge the routing charges described below. All charges by the Exchange for routing are applicable only in the event that an order is executed. In other words, there is no charge for orders that are routed away from the Exchange but are not filled. In connection with routing of orders away from the Exchange, the Exchange proposes to charge: (A) $0.0029 per share for Destination Specific Orders[6] routed to NASDAQ, the International Securities Exchange (''ISE''), and the National Securities Exchange (''NSX''); (B) $0.0028 per share for Destination Specific Orders routed to NYSE Arca; (C) $0.0009 per share (other than exchange traded funds, or ''ETFs'', if applicable)[7] for Destination Specific Orders routed to the NYSE; (D) $0.0005 per share for Modified Destination Specific Orders[8] routed to a dark liquidity venue (i.e., an alternative trading system known as a ''dark pool''); (E) $0.0035 per share for Directed ISO's;[9] (F) $0.03 per share for Odd Lot Orders[10] routed to NYSE Arca in Tape A Securities and Tape B Securities; (G) 0.004 per share for Odd Lot Orders routed to NYSE Arca in Tape C Securities; (H) 0.29% of the total dollar value of the execution of an order for any security (All Tapes) priced under $1.00 per share that is routed away from the Exchange; and (I) $0.0029 per share for all other routing options offered by the Exchange, including routing as part of the Exchange's default best execution routing strategy (''CYCLE''). The differences between the fees charged for routing to specific market centers and routing of specific order types described above are due to different cost structures at the various market centers to which orders may be routed and other factors. For instance, lower transaction fees at NYSE Arca (in round lots) and NYSE allow the Exchange to charge lower routing fees for Destination Specific Orders routed to such markets than Destination Specific Orders routed elsewhere (i.e., to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.196–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] As defined in BATS Rule 11.9(c)(10).

[7] To the extent any Destination Specific Orders in ETF products are routed to the NYSE, the charge will be $0.0029 per share, as set forth in (I) and on the schedule of fees (''all other routing options offered by the Exchange'').

[8] As defined in BATS Rule 11.9(c)(11).

[9] As defined in BATS Rule 11.9(d)(2).

[10] As defined in BATS Rule 11.9(c)(2).

NASDAQ, ISE or NSX) or for odd lots routed to NYSE Arca. Similarly, lower transaction fees at dark liquidity venues permit the Exchange to charge lower routing fees for Modified Destination Specific Orders routed to such venues. Because the Exchange incurs additional costs and performs additional services in connection with the routing of Directed ISOs, it charges a higher routing fee for such orders. Finally, because the Exchange believes that a uniform routing fee for all other orders routed away from the Exchange (other than those set forth in (A) through (H) above) provides Members with certainty as to transaction costs, it proposes to charge a standard routing fee for such orders, rather than further differentiating routing fees that it charges to Members.

(v) *Fees and Rebates for Non-Displayed Liquidity.*

The Exchange proposes to charge different fees and provide different rebates for executions involving non-displayed liquidity on the Exchange's book (this pricing is referred to by the Exchange as ''Dark Match'' pricing on the proposed fee schedule). Because the Exchange wishes to encourage larger trade sizes to execute against non-displayed liquidity on the Exchange's book, orders that remove non-displayed liquidity from the Exchange will be charged fees lower than the Exchange's standard fees, as set forth on the schedule below. Conversely, non-displayed orders, including Pegged Orders,[11] Mid-Point Peg Orders,[12] and Non-Displayed Orders,[13] will receive rebates lower than the Exchange's standard rebates, as set forth on the schedule below. Dark Match pricing for rebates does not apply to Reserve Orders [14] or Discretionary Orders.[15]

Below is the proposed Dark Match pricing schedule:

Trade size	Rebate/ share	Fee/ share
1–500	$0.0020	$0.0025
501–5,000	0.0020	0.0024
5,001–10,000	0.0016	0.0020
10,001–25,000	0.0010	0.0018
25,001+	0.0005	0.0015

2. Statutory Basis

The Exchange believes that the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[16] Specifically, the proposed rule change is consistent with Section 6(b)(4) of the Act,[17] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues. The Exchange also believes that the proposed rates further the objectives of Regulation NMS by promoting competition and granting fair and equal access to all exchange participants. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [18] and Rule 19b-4(f)(2) thereunder,[19] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

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–BATS–2008–009 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–BATS–2008–009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BATS. 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–BATS–2008–009 and should be submitted on or before November 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26110 Filed 10–31–08; 8:45 am]

BILLING CODE 8011–01–P

[11] As defined in BATS Rule 11.9(c)(6).

[12] As defined in BATS Rule 11.9(c)(7).

[13] As defined in BATS Rule 11.9(c)(9).

[14] As defined in BATS Rule 11.9(c)(1).

[15] As defined in BATS Rule 11.9(c)(8).

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58864; File No. SR–BSE–2008–45]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To Amend the By-Laws of the Boston Stock Exchange, Inc.

October 27, 2008.

On September 5, 2008, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') 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 the by-laws of BSE in accordance with SR–BSE–2008–23.[3] The proposed rule change was published for comment in the **Federal Register** on September 22, 2008.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of Section 6 of the Act [6] and the rules and regulations thereunder. Specifically, as discussed more fully in the Acquisition Approval Order,[7] the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,[8] which requires among other things, that a national securities exchange be so organized to carry out the purposes of the Act and comply with the requirements of the Act; and Section 6(b)(3) of the Act,[9] which requires, among other things, that a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs. The proposal is designed to clarify the procedures for the selection of directors to the BSE board of directors that are representative of members; limit the influence that a single member, or group of members, may exercise over the Exchange; and clarify the procedures for ensuring that participants in BSE's options exchange facility have fair representation on the BSE board of directors.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–BSE–2008–45) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26109 Filed 10–31–08; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (order approving proposed rule changes by BSE and the Boston Stock Clearing Corporation relating to, among other things, the acquisition of BSE by The NASDAQ OMX Group, Inc. (''Acquisition'')) (''Acquisition Approval Order''). In connection with SR–BSE–2008–23, BSE committed to propose to its Board of Directors immediately following the closing of the Acquisition certain amendments to the bylaws of BSE. *See id.* at notes 73, 75, 214, and accompanying text.

[4] *See* Securities Exchange Act Release No. 58547 (September 15, 2008), 73 FR 54648.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] *See* Acquisition Approval Order, *supra* note 3, at notes 78–84, 216, and accompanying text.

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(3).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58870; File No. SR–CBOE–2008–110]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Short Term Option Series

October 28, 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 27, 2008, the Chicago Board Options Exchange, Incorporated (''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.

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Short Term Option Series pilot program (''Pilot Program'') to increase the number of series that may be listed for a class selected to participate in the Pilot Program from seven series to twenty series. 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.

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

On July 12, 2005, the Commission approved the Pilot Program.[5] The Pilot Program allows CBOE to list and trade Short Term Option Series, which would expire one week after the date on which a series is opened. Under the Pilot Program, CBOE can select up to five approved option classes on which Short Term Option Series could be opened.

[5] *See* Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR–CBOE–2004–63) (''Pilot Program Approval Order''). The Pilot Program has since been extended and is currently scheduled to expire on July 12, 2009. *See* Securities Exchange Act Release No. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (SR–CBOE–2006–48) (immediately effective rule change extending the Pilot Program, which would have otherwise expired on July 12, 2006, through July 12, 2007), 56050 (July 11, 2007), 72 FR 39472 (July 18, 2007) (SR–CBOE–2007–76) (immediately effective rule change extending the Pilot Program through July 12, 2008); and 58094 (July 3, 2008), 73 FR 40000 (July 11, 2008) (SR–CBOE–2008–70) (immediately effective rule change extending the Pilot Program through July 12, 2009); *see also* Securities Exchange Act Release No. 54338 (August 21, 2006), 71 FR 50952 (August 28, 2006) (SR–CBOE–2006–49) (order approving an amendment to the Pilot Program that increased the number of series that may be listed for a class selected to participate in the Pilot Program from five series to seven series).

If selected for the Pilot Program, the Exchange may open up to seven Short Term Option Series for each expiration date in that class. The strike price of each Short Term Option Series are fixed at a price per share, with approximately the same number of strike prices above and below the value of the underlying security or calculated index value at about the time that the Short Term Option Series is opened.[6] If the Exchange opens less than seven Short Term Option Series for a given expiration date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current value of the underlying security or index moves substantially from the exercise price or prices of the series already opened. In any event, the total number of series for a given expiration date will not exceed seven series.

The Exchange has selected the following four options classes to participate in the Pilot Program: S&P 500 Index options (SPX), S&P 100 Index American-style options (OEX), Mini-S&P 500 Index options (XSP), and S&P 100 Index European-style options (XEO). CBOE believes the Pilot Program has been successful and well received by its members and the investing public.

CBOE is now proposing to modify the terms of the Pilot Program to provide that up to twenty (as opposed to seven) Short Term Option Series may be opened for each expiration date. The Exchange believes this increase in the number of series would provide investors with greater flexibility in the trading of Short Term Option Series by allowing investors to establish options positions that are better tailored to meet their investment objectives. CBOE also believes that allowing for the increased number of series would allow us to better maintain an orderly market, meet customer demand and respond in scenarios when the market price of the underlying moves substantially from the exercise price or prices of the series already opened, which has been our experience recently with the recent volatility in the market. Indeed, member firms representing customers have repeatedly requested that CBOE seek to increase the number of available series.

Consistent with the existing Pilot Program provisions: (i) Approximately the same number of strike prices would be opened above and below the value of the underlying security or calculated index value at about the time the Short Term Option Series are initially opened for trading; (ii) if the Exchange has opened less than twenty Short Term Option Series for a given expiration date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current value of the underlying security or index moves substantially from the exercise price or prices of the series already opened; and (iii) in any event, the total number of series for a given expiration date will not exceed twenty series.

The Exchange is also changing the Pilot Program rules to include a condition that any strike prices initially listed by the Exchange shall be within thirty percent (30%) above or below the closing price of the underlying security on the preceding day or the current value of the underlying index, as applicable. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security or current value of the underlying index, as applicable. Under the rule change, the Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security or current value of the underlying index, as applicable, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened.[7]

In support of the rule change, and as required by the Pilot Program Approval Order, the Exchange has submitted to the Commission a Pilot Program report (the ''Report'') detailing the Exchange's experience with the Pilot Program. Specifically, the Report contains data and written analysis regarding the four options classes included in the Pilot Program. The Report was submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand to increase the number of series. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any capacity-related problems with respect to Short Term Option Series. The Exchange also represents that it has the necessary system capacity to support the option series listed under the Pilot Program and the proposed increase in number of series.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[8] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that increasing the number of series will result in a continuing benefit to investors, by allowing them additional means to manage their risk exposures and carry out their investment objectives.

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.

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)

[6] For example, if seven series are initially opened, there will be at least three strike prices above and three strike prices below the value of the underlying security or calculated index value.

[7] These new parameters are similar to parameters that are already in place for the Exchange's Quarterly Options Series pilot program. *See* CBOE Rule 5.5(e)(4). The Exchange is also making a non-substantive change to delete an errant phrase, ''or calculated index value,'' in two locations in the text of CBOE Rule 5.5.03. Weekly options overlying indexes are addressed in CBOE Rule 24.9(a)(2), so the reference to a calculated index value in CBOE Rule 5.5.03 is unnecessary.

[8] 15 U.S.C. 78s(b)(1).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

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 [11] and Rule 19b–4(f)(6) thereunder.[12]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable CBOE to better meet customer demand in light of recent increased volatility in the marketplace.[13] Therefore, the Commission designates the proposal operative upon filing.

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 No. SR–CBOE–2008–110 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–2008–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2008–110 and should be submitted on or before November 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26105 Filed 10–31–08; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58778; File No. SR–CBOE–2008–90]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change Related to Trades in Restricted Classes

October 14, 2008.

Correction

In notice document E8–24971 beginning on page 62577 in the issue of Tuesday, October 21, 2008, the date is corrected to read as set forth above.

[FR Doc. Z8–24971 Filed 10–31–08; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58861; File No. SR–ISE–2008–78]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Quoting Obligations for Competitive Market Makers

October 27, 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 21, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 ISE proposes to amend ISE Rules 713, 804 and 805 to establish a new quoting obligation for the Exchange's Competitive Market Makers (''CMMs''). The text of the proposed rule change is as follows, with deletions in [brackets] and additions *italicized:*

Rule 713. Priority of Quotes and Orders

(a) through (f) no change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Supplementary Material to Rule 713

.01 and .02 no change.

.03 Preferenced Orders. An Electronic Access Member may designate a ''Preferred Market Maker'' on orders it enters into the System (''Preferenced Orders'').

(a) A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

(b) If the Preferred Market Maker is not quoting at a price equal to the NBBO at the time the Preferenced Order is received, the allocation procedure contained in paragraph .01 shall be applied to the execution of the Preferenced Order.

(c) If the Preferred Market Maker is quoting at the NBBO at the time the Preferenced Order is received, the allocation procedure contained in paragraph .01 shall be applied to the execution of the Preferenced Order except that the Primary Market Maker will not receive the participation rights described in paragraphs .01(b) and (c), and instead the Preferred Market Maker shall have participation rights equal to the greater of:

(i) the proportion of the total size at the best price represented by the size of its quote, or

(ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Non-Customer Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Non-Customer Orders and/or market maker quotes at the best price.

(d) Preferred Competitive Market Makers are subject to enhanced quoting requirements as provided in Rule 804(e)(2)(ii).

.04 No change.

* * * * *

Rule 804. Market Maker Quotations

(a) through (d) no change.

(e) *Continuous Quotes.* A market maker must enter continuous quotations for the options classes to which it is appointed pursuant to the following:

(1) Primary Market Makers. Primary Market Makers must enter continuous quotations and enter into any resulting transactions in all of the series listed on the Exchange of the options classes to which he is appointed on a daily basis.

(2) Competitive Market Makers. (i) On any given day, a Competitive Market Maker must participate in the opening rotation and make markets and enter into any resulting transactions on a continuous basis in [all] *at least 60%* of the series listed on the Exchange of at least sixty percent (60%) of the options classes for the Group to which the Competitive Market Maker is appointed or [60] *40* options classes in the Group, whichever is lesser.

(ii) Whenever a Competitive Market Maker enters a quote in an options class to which it is appointed, it must maintain continuous quotations for [all] *that series and at least 60% of the* series of the options class listed on the Exchange until the close of trading that day[.]*; provided, however, that a Competitive Market Maker shall be required to maintain continuous quotations for that series and at least 90% of the series of any options class in which it receives Preferenced Orders (see Supplementary Material .03 to Rule 713 regarding Preferenced Orders).*

(iii) A Competitive Market Maker may be called upon by an Exchange official designated by the Board to submit a single quote or maintain continuous quotes in one or more of the series of an options class to which the Competitive Market Maker is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of fair and orderly markets.

(f) and (g) no change.

Supplementary Material to Rule 804

[.01 Notwithstanding ISE Rules 804(e)(2)(i)–(ii), for a pilot period that commences on September 20, 2007 and expires on September 19, 2008, and limited to options classes overlying no more than twenty (20) individual stocks as specifically designated by the Exchange (''Pilot Program Securities''), a Competitive Market Maker must participate in the opening rotation and make markets and enter into any resulting transactions on a continuous basis in only sixty percent (60%) of the series of the options classes overlying the Pilot Program Securities. Whenever a Competitive Market Maker enters a quote in a series of the options classes of the Pilot Program Securities, it must maintain continuous quotations in that series until the close of trading that day.]

Rule 805. Market Maker Orders

(a) no change.

(b) Options Classes Other Than Those to Which Appointed.

(1) A market maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of options listed on the Exchange to which the market maker is not appointed under Rule 802, provided that:

(i) the spread between a limit order to buy and a limit order to sell the same options contract complies with the parameters contained in Rule 803(b)(4); and

(ii) the market maker does not enter orders in options classes to which it is otherwise appointed, either as a Competitive or Primary Market Maker.

(2) Competitive Market Makers. The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded [per each] *by such* Competitive Market Maker [Membership] *in classes to which it is appointed and with respect to which it was quoting pursuant to Rule 804(e)(2).*

(3) no change.

* * * * *

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

The Exchange proposes to amend ISE Rules 713, 804 and 805 to establish a new quoting obligation for the Exchange's CMMs. ISE currently requires CMMs to participate in the opening and maintain continuous quotations in all of the series of at least 60 per cent of the options classes in the bin or 60 classes, whichever is lesser. Additionally, if a CMM chooses to quote any series of an options class above and beyond this minimum requirement, it must then maintain continuous quotations in all of the series of the class throughout that trading day. Last September, the Exchange initiated a pilot to relax the continuous quoting obligations for CMMs in 20 options classes.[3] Under the Pilot, CMMs were

[3] *See* Securities Exchange Act Release No. 56444 (September 14, 2007), 72 FR 54089 (September 21, 2007) (Order Granting Approval of SR–ISE–2007–45

Continued

required to maintain continuous quotations in only 60 per cent of the series of an options class overlying the pilot program securities. The Pilot recently expired and the Exchange now proposes to establish relaxed quoting requirements for CMMs on a permanent basis.

With the explosion of quotation traffic—exacerbated by the penny pilot—we continue to seek ways to mitigate the generation of quotations. Our experience with the Pilot indicates that relaxing the continuous quoting obligation has had no negative effect on the quality of our markets. In practice, market makers simply widen their quotations when they do not want to trade in a particular series, so requiring them to maintain continuous quotations in all series merely increases capacity requirements for the market makers. Therefore, ISE proposes to adopt the 60 per cent standard for all options series on a permanent basis, with one exception related to CMMs that receive preferenced order flow. In this circumstance, a CMM receives the benefit of enhanced allocation rights similar to, and instead of, a Primary Market Maker. Therefore, it is appropriate to apply a higher continuous quotation standard on such CMMs, which we propose to be 90 per cent of the series.[4]

Additionally, ISE proposes to lower the minimum number of options classes that a CMM is required to quote from 60 to 40. While as stated above there is little benefit to the quality of our markets when CMMs are forced to maintain continuous quotations in options classes in which they do not want to trade, this requirement discourages some potential market participants because it requires too much systems capacity relative to the number of classes they are actually interested in trading on the ISE. Thus, the Exchange believes lowering the requirement would attract additional market making participants on the ISE.

Finally, the Exchange proposes to amend Rule 805 (Market Maker Orders) to restrict the percentage of volume a CMM may execute in options to which it is not appointed. Specifically, the rule currently provides that a CMM may execute up to 25% of its volume in options classes to which it is not appointed. Since the Exchange is lowering the number of appointed class in which a CMM is required to quote, the Exchange believes it is appropriate to base the 25% allowance on volume that is executed while a CMM is actually fulfilling its market maker quotation obligations.

Overall, the Exchange believes the proposed rule change is a step towards adopting an internal quote mitigation plan that is beneficial both to the Exchange and to its members without adversely affecting ISE's quality of markets.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest, by relaxing the quoting requirements thereby reducing the number of options quotations required to be submitted, which should enable the Exchange to mitigate quote traffic and use of capacity without adversely affecting the Exchange's quality of markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2008–78 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2008–78. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2008–78 and should be submitted on or before November 24, 2008.

Relating to a Quote Mitigation Plan for Competitive Market Makers) (the ''Pilot'').

[4] *See* CBOE Rule 8.13. The Chicago Board Options Exchange has a similar quotation standard for its preferred market makers.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26107 Filed 10–31–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58857; File No. SR–NYSE–2008–52]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2 and 3 Thereto, To Modify the Method by Which Securities Are Allocated and Reallocated to Designated Market Maker Units and To Establish an Allocation System Based on a Single Objective Measure To Determine a Designated Market Maker Unit's Eligibility To Participate in the Allocation Process

October 24, 2008.

I. Introduction

On August 11, 2008, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its process for allocating and reallocating securities to DMM units. On August 13, 2008, NYSE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 21, 2008.[3] The Commission received no comments on the proposed rule change, as modified by Amendment No. 1. On October 8, 2008, NYSE filed Amendment No. 2 to the proposed rule change.[4] On October 24, 2008, NYSE filed Amendment No. 3 to the proposed rule change.[5] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The Exchange proposes amending NYSE Rules 103A (Specialist Stock Reallocation and Member Education and Performance) and 103B (Specialist Stock Allocation) to be more closely reflective of the Exchange's increased electronic trading environment.[6] Generally, the Exchange proposes modifying the current Allocation Policy to establish a single quantifiable objective measure to determine a DMM unit's eligibility to participate in the allocation process and provide issuers with more choice in the selection of its DMM unit. The Exchange further proposes to allow the issuer to select the DMM units it chooses to interview directly. The Exchange therefore seeks to eliminate the Allocation Committee as the overseer of the allocation process and the Allocation Panel from which the Allocation Committee members are selected. The Exchange also proposes to eliminate the allocation decision criteria that are, in part, based on subjective measures of DMM performance by discontinuing the use of the Specialist Performance Evaluation Questionnaire (''SPEQ''). In doing so, the Exchange seeks to replace the SPEQ with an objective measure designed to set a minimum standard that would be used to determine a DMM unit's eligibility to participate in the new security allocation process.

In connection with the amendment of NYSE Rule 103A, the Exchange also proposes to eliminate the Market Performance Committee as the entity that is responsible for reallocating securities, as well as eliminate performance improvement actions. NYSE Regulation, Inc. (''NYSER'') would replace the Market Performance Committee as the entity responsible for developing procedures and standards with respect to the qualification and performance of members active on the Floor of the Exchange. Current sections of NYSE Rule 103A that address DMM security reallocation are amended and incorporated into NYSE Rule 103B.

A. Amendments to NYSE Rule 103A

The Exchange seeks to amend NYSE Rule 103A to eliminate the concept of a performance improvement action. Instead, the Exchange recently has amended its system of variable payments to DMM units to create a liquidity provision payment (''LPP'') to incentivize DMM unit performance. The payment is based, in part, on the DMM unit's trading performance by measuring its liquidity enhancing behavior. LPPs are based on two revenue sources in NYSE-listed securities: (1) The Exchange's share of market data revenue derived from quoting shares; and (2) the Exchange's transaction fee revenue.[7] The payments derived from transaction revenue are based on Exchange reviews of the DMM unit's executed volume in four categories: (1) Price improvement; (2) size improvement; (3) providing liquidity from posting bids or offers on the book; and (4) matching better bids or offers published by other market centers to reduce client routing cost.[8] Moreover, the Exchange proposes to amend NYSE Rule 103A to vest the overview of member education programs with NYSER [9] since the day to day administration of member education is currently performed by the Market Surveillance Division staff of NYSER.

B. Amendments to NYSE Rule 103B

1. Proposed Objective Measure for Eligibility for Allocation Process

The Exchange proposes establishing a single objective measure to determine a DMM unit's eligibility to participate in the allocation process.[10] A DMM unit would be eligible to participate in the allocation process of a listed security when the DMM unit meets the quoting requirements for ''Less Active'' and ''More Active'' securities.[11] A ''Less Active Security'' is defined as any listed security that has a consolidated average daily volume of less than one million shares per calendar month.[12] A ''More Active Security'' is defined as any listed security that has a consolidated average daily volume equal to or greater than one million shares per calendar month.[13]

For Less Active Securities, a DMM unit must maintain a bid and an offer at the National Best Bid (''NBB'') and National Best Offer (''NBO'') (collectively herein ''NBBO'') for an

[5] 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. 58363 (August 14, 2008), 73 FR 49514 (''Notice'').

[4] Amendment No. 2 corrects a minor bracketing error in Section IX of the rule text of the proposed rule change. Because Amendment No. 2 is technical in nature, the Commission is not publishing it for comment.

[5] Amendment No. 3 updates the rule text to replace references to specialist and specialist units with references to designated market makers (''DMMs'') and DMM units respectively, which is consistent with changes recently approved by the Commission relating to the Exchange's new market model. *See* Securities Exchange Act Release No. 58845 (October 24, 2008) (order approving SR–NYSE–2008–46). Because Amendment No. 3 is technical in nature, the Commission is not publishing it for comment.

[6] The Exchange has indicated that the proposed rule change will become operative concurrently with the implementation of its new market model. *See supra* note 5.

[7] *See* Securities Exchange Act Release No. 56591 (October 1, 2007), 72 FR 57371 (October 9, 2007) (SR–NYSE–2007–89).

[8] NYSE Rule 104 sets forth quoting messages that DMM are permitted to send as part of their quoting functionality.

[9] NYSE Rule 103A, Section I.

[10] Proposed NYSE Rule 103B, Section II(A).

[11] *Id.*

[12] Proposed NYSE Rule 103B, Section II(B).

[13] Proposed NYSE Rule 103B, Section II(C).

aggregate average monthly NBBO of 10% or more during a calendar month.[14] For More Active Securities, a DMM unit must maintain a bid and an offer at the NBBO for an aggregate average monthly NBBO of 5% or more during a calendar month.[15] DMM units must satisfy the quoting requirement for both categories (Less Active and More Active) of their assigned securities.[16]

If a DMM unit fails to satisfy the requirements of proposed NYSE Rule 103B, Section II(D) and (E) for a one-month period, the Exchange would issue an initial warning letter to the DMM unit, advising it of its deficiency.[17] The DMM unit would provide in writing an explanation and articulation of corrective action.[18] If the DMM unit fails to meet the requirement of proposed NYSE Rule 103B, Section II(D) and (E) for a second consecutive month, the DMM unit would be ineligible to participate in the allocation process for a minimum of two months following the second consecutive month of its failure to meet its quoting requirement (''Penalty Period'').[19]

The DMM unit would have to satisfy the quoting requirement for the two consecutive months of the Penalty Period in order to become eligible to participate in the allocation process. In the event a DMM unit fails to satisfy its quoting requirement for the two consecutive months of the Penalty Period, the DMM unit would remain ineligible to participate in the allocation process until it has met the quoting requirement for a consecutive two calendar month period.[20] The Exchange would review each DMM unit's trading on a monthly basis to determine whether the DMM unit has satisfied its quoting requirement.[21]

2. Elimination of the SPEQ

The Exchange proposes to permanently eliminate the use of the SPEQ. According to the Exchange, while the SPEQ has been an important mechanism to evaluate DMM performance for allocation and performance improvement action purposes, recent moves by the Exchange to adopt a more electronic trading environment have rendered the SPEQ less reliable as an assessment tool.

3. Elimination of the Allocation Committee

The Exchange proposes to allow an issuer to select the DMM units it chooses to interview directly from the DMM units that are eligible to participate in the allocation process, which obviates the need for an Allocation Committee.[22]

C. Administration of the New Allocation Policy

Once the list of DMM units that meet the objective standard established by the Exchange is generated, the list would be provided to the listing company and the listing company may proceed under one of two options.

1. Issuer Selects DMM Unit

Under the first option, the listing company would select the DMM units it wishes to interview. The issuer would then proceed to conduct interviews of the selected units. A DMM unit's eligibility to participate in the allocation process would be determined at the time the interview is scheduled, *i.e.*, if it has met the quoting requirements set forth above at the time of the interview, it would be eligible to be considered for allocation.[23]

If the issuer selects the DMM unit, the issuer would select a minimum of three DMM units to interview from the pool of DMM units eligible to participate in the allocation process.[24] DMM units selected for an interview may provide material to the Exchange, which would be given to the issuer the day before the scheduled interview. Such material may include a corporate overview of the DMM unit and the trading experience of the designated DMM. DMM units would be prohibited from giving issuers information about other DMM units or any additional market performance data.[25]

Within five business days after the issuer selects the DMM units to be interviewed (unless the Exchange has determined to permit a longer time period in a particular case), the issuer would meet with representatives of each of the DMM units. At least one representative of the listing company must be a senior official of the rank of Corporate Secretary or above of that company. In the case of the listing of a structured product, a senior officer of the issuer may be present in lieu of the Corporate Secretary. No more than three representatives of each DMM unit may participate in the meeting, each of whom must be an employee of the DMM unit, and one of whom must be the individual DMM who is proposed to trade the company's security, unless that DMM is unavailable to appear, in which case a telephone interview is permitted. Meetings would normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere.[26]

Following its interview, a DMM unit may not have any contact with an issuer. If an issuer has a follow-up question regarding any DMM unit(s) it interviewed, it must be conveyed to the Exchange. The Exchange would contact the unit(s) to which the question pertains and would provide any available information received from the unit(s) to the listing company.[27]

Within two business days of the issuer's interviews with the DMM units, the issuer would select its DMM unit in writing, signed by a senior official of the rank of Corporate Secretary or higher, or in the case of a structured product listing, a senior officer of the issuer, duly authorized to so act on behalf of the company. The Exchange then would confirm the allocation of the security to that DMM unit, at which time the security would be deemed to have been so allocated. An issuer may request an extension from the Exchange if the issuer is unable to complete its selection within the specified period.[28]

2. Issuer Delegates Selection to the Exchange

If the issuer delegates authority to the Exchange to select its DMM unit, three members of the Exchange's Senior Management, as designated by the Chief Executive Officer (''CEO'') of the Exchange or his or her designee, one non-DMM Executive Floor Governor and two non-DMM Floor Governors (''Exchange Selection Panel''), would select a DMM unit based on a review of all information that would be available to the issuer. The non-DMM Executive Floor Governor and non-DMM Floor Governors would be designated on a rotating basis.

The Exchange Selection Panel would select the DMM unit pursuant to the

[14] Proposed NYSE Rule 103B, Section II(D).

[15] Proposed NYSE Rule 103B, Section II(E).

[16] A more detailed description, as well as an example, of how the quoting requirement is calculated is contained in the Notice, *supra* note 3.

The Exchange Strategic Analysis Department would be responsible for generating and monitoring the DMM units' performance data to determine those DMM units that are eligible to be allocated securities.

[17] Proposed NYSE Rule 103B, Section II(J)(1). The Exchange Specialist Liaison Department would be responsible for issuing the warning letter to a DMM unit that fails to meet its requirement. It also would be responsible for advising a DMM unit of its eligibility or ineligibility to participate in the allocation process.

[18] Proposed NYSE Rule 103B, Section II(J)(1).

[19] Proposed NYSE Rule 103B, Section II(J)(2).

[20] Proposed NYSE Rule 103B, Section II(J)(3).

[21] Proposed NYSE Rule 103B, Section II(J)(4).

[22] Proposed NYSE Rule 103B, Section III(A)(1)–(3).

[23] Proposed NYSE Rule 103B, Section II(I).

[24] Proposed NYSE Rule 103B, Section III(A)(1).

[25] Proposed NYSE Rule 103B, Section III(A)(2)(a).

[26] Proposed NYSE Rule 103B, Section III(A)(2)(b).

[27] Proposed NYSE Rule 103B, Section III(A)(2)(d).

[28] Proposed NYSE Rule 103B, Section III(A)(3)(a).

provisions of NYSE 103B Section III(A) (''DMM Unit Selected by the Issuer'') with the Exchange Selection Panel acting on behalf of the issuer. The Exchange Selection Panel would be responsible for informing the issuer of the DMM unit.

The selection of the DMM unit would be made by majority vote with any tie votes being decided by the CEO of the Exchange or his or her designee. The Exchange would notify the DMM unit and the issuer immediately of its decision. The DMM unit would then be responsible for providing the issuer with the name of the DMM with the requisite experience and skill it believes is appropriate to trade the issuer's security.[29]

Whether the issuer or the Exchange selects the DMM unit to receive the security allocation, the individual DMM ultimately assigned the proposed security would be required to remain the assigned DMM for one year from the date that the issuer begins trading on the Exchange. The DMM unit may designate a different individual DMM within the year by notifying the Exchange of the change in DMM and setting forth the reasons for the change with the consent and approval of the issuer.[30]

D. Reallocation

When an issuer has requested and confirmed a change of DMM unit pursuant to Section 806.01 of the Exchange Listed Company Manual, the security would be put up for reallocation as soon as practicable, in accordance with the allocation process set forth in proposed NYSE Rule 103B, Section III.[31]

E. Egregious Situations

The Exchange proposes moving current provisions codified in NYSE Rule 103A, which provide for the reallocation of a security when a DMM unit's performance is so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market to, proposed NYSE Rule 103B. Currently, NYSE Rule 103A states that, in such an instance, the Market Performance Committee may immediately initiate a reallocation proceeding upon written notice to the DMM unit, specifying the reasons for the initiation of the proceeding. The Exchange proposes to incorporate this concept in NYSE Rule 103B and to transfer the authority to initiate a reallocation proceeding upon written notice to the DMM unit from the Market Performance Committee to the CEO or his or her designee.[32]

Following this decision, if the CEO or his or her designee makes a final determination that a security should be referred for reallocation, the Exchange proposes that the CEO or his or her designee would, in his or her expert business judgment, be responsible for reallocating the security to one of the remaining DMM units eligible for allocation. The CEO or his or her designee would then make a final determination as to which one or more of the DMM unit's securities would be referred for reallocation. All determinations made by the CEO or his or her designee would be communicated in writing to the DMM unit, with a statement of the reasons for such determinations. DMM units would have the right to have this decision reviewed by the Exchange's Board of Directors.[33]

F. DMM Unit Communication Policies and Procedures With Listing Company

Currently, NYSE Rule 106 requires, among other things, that DMM units make themselves available for contact with their listing companies periodically throughout the year. NYSE Rule 106 was adopted in 1989 at a time when orders entered with the DMM were handled manually and contact between a DMM unit and its listed companies was necessary to ensure that listed companies were informed about the trading in its listed security on the Floor.[34] The Exchange believes that the requirements of NYSE Rule 106 are no longer necessary.[35] As such, the Exchange seeks to rescind NYSE Rule 106 that sets forth the DMM unit's obligation to communicate with the aforementioned entities.

G. Exchange-Traded Funds

The Exchange proposes to delete from NYSE Rule 103B the section related to the allocation of Exchange-Traded Funds (''ETFs'') admitted to trading on the Exchange on an Unlisted Trading Privileges (''UTP'') basis. In 2007, the Exchange completed a transfer of all ETFs admitted to trading on the Exchange on an UTP basis to NYSE Arca℠ NYSE Euronext's fully electronic U.S. listing and trading platform. Accordingly, the Exchange proposes to delete this provision from the rule.

H. Closed-End Management Investment Companies (''Funds'')

The Exchange further proposes that Funds listing on the Exchange would be subject to the allocation process pursuant to proposed NYSE Rule 103B, Section III. If the issuer of an initial Fund lists additional funds within nine months from the date of its initial listing, the issuer may choose to maintain the same DMM unit for those subsequently listed funds or it may select a different DMM unit from the group of eligible DMM units that the issuer interviewed in the allocation process for its initial Fund. The fund may also delegate the selection of its DMM unit to the Exchange if it so chooses pursuant to proposed NYSE Rule 103B, Section III(B).[36]

If a DMM unit is ineligible from participating in an allocation as set forth in proposed NYSE Rule 103B, Section III, at the time of a subsequent new Fund listing (within the designated nine-month period), that DMM unit would not be included for consideration for subsequent listings.[37]

I. Spin-Offs, Relistings, Common Stock, Target Stock, Warrants and Rights

The Exchange proposes to rename the section entitled ''Spin-offs and listing of related companies'' to also include ''related securities'' in order to address the assignment of warrants and rights.[38] Proposed NYSE Rule 103B, Section VI(A) continues to allow the listing company to remain with the DMM unit registered in the related spin-off or related company and also would allow the listing company to be referred for allocation through the allocation process pursuant to proposed NYSE Rule 103B, Section III, if it so chooses. If the spin-off company, company

[29] Proposed NYSE Rule 103B, Section III(B)(1).

[30] Proposed NYSE Rule 103B, Section III(B)(2).

[31] Proposed NYSE Rule 103B, Section IV.

[32] Proposed NYSE Rule 103B, Section V, based on Exchange Rule 103A(f).

[33] Proposed NYSE Rule 103B, Section V(E).

[34] *See* Securities Exchange Act Release No. 27292 (September 26, 1989), 54 FR 41193 (October 5, 1989) (SR–NYSE–89–13). As a result, NYSE Rule 106 mandates interaction between a DMM unit and representatives of listed companies. The rule requires that one or more senior officials of the rank of Corporate Secretary or higher at the listing company have an opportunity to have contact with the DMM unit on a quarterly basis. Further, the rule mandates that at least one of the quarterly meetings be in-person.

[35] NYSE Rule 106 further mandates that the DMM unit make itself available to the Exchange's fifteen largest member organizations through required semi-annual ''off the Exchange Floor'' contact. According to the Exchange, the interpersonal relationship between DMM units and member organizations that once took front stage in the marketplace has been significantly replaced by automated trading initiatives and computerized market data reports. DMM units are generally in contact with member organizations, either through electronic and/or telephonic means on a regular basis, which similarly renders the requirements of NYSE Rule 106(b) unnecessary.

[36] Proposed NYSE Rule 103B, Section VI(F).

[37] *Id.*

[38] Proposed NYSE Rule 103B, Section VI(A).

related to a listed company or the company relisting chooses to have its DMM unit selected by the Exchange pursuant to NYSE Rule 103B, Section III(B), and requests not to be allocated to the DMM unit that was its listed company's DMM unit, such request would be honored.

The Exchange further proposes that common stock (listed after preferred stock) be referred for allocation through the allocation process pursuant to proposed NYSE Rule 103B, Section III.[39]

In addition, NYSE Rule 103B, Section VI(A) would be amended to codify that a warrant issued by a listed company and traded on the Exchange would be allocated to the DMM unit registered in the underlying security of the listed company.[40] Upon request by the issuer, the warrant may be allocated through the allocation process pursuant to proposed NYSE Rule 103B, Section III.[41]

Moreover, the Exchange proposes to codify that rights are not subject to the allocation process pursuant to proposed NYSE Rule 103B, Section III. Rights are considered short-term securities, which are exempt from registration under the Act.[42] Accordingly, rights are not treated as listed securities on the Exchange and are not subject to the allocation process pursuant to proposed NYSE Rule 103B, Section III. Rights are assigned, when issued, to the DMM unit by the Exchange.[43]

DMM units that are ineligible to receive a new allocation due to its failure to meet the requirements of proposed NYSE Rule 103B, Sections (II)(D) and (E) would remain eligible to receive an allocation pursuant to NYSE Rule 103B, Section VI.

J. Listed Company Mergers

When two NYSE listed companies merge, the merged entity is assigned to the DMM in the company that is determined to be the survivor-in-fact (dominant company). Where no surviving/dominant company can be identified after two NYSE listed companies merge, the NYSE proposes that the merged company may select one of the DMM units trading the merging companies' security without the security being referred for reallocation, or it may request that the matter be referred for allocation through the allocation process pursuant to NYSE Rule 103B, Section III.[44] DMM units that are ineligible to receive a new allocation due to its failure to meet the requirements of NYSE Rule 103B, Sections II(D) and (E) would remain eligible to receive an allocation pursuant to this section.[45]

In situations involving the merger of a listed company and an unlisted company, where the unlisted company is determined to be the survivor-in-fact, such company may choose to remain registered with the DMM unit that had traded the security of listed company entity in the merger, or it may request that the matter be referred for allocation through the allocation process pursuant to proposed NYSE Rule 103B, Section III.[46] If the unlisted company chooses to have its DMM unit selected by the Exchange, the company may not request that the Exchange exclude from consideration the DMM unit that had traded the listed company's security.[47]

K. Allocation Sunset Policy

The Exchange proposes to extend the effectiveness of allocation decisions with respect to any initial public offering listing company, which lists on the Exchange, from three months to six months.[48] In situations in which the selected DMM unit merges or is involved in a combination within the six-month period, the company may choose whether to stay with the selected DMM unit, or be referred to allocation. If a company approved for listing does not list within six months of its initial public offering, the matter would be referred for allocation through the allocation process pursuant to proposed NYSE Rule 103B, Section III.[49]

L. Provisions for Allocation of Listing Companies Transferring From NYSE ARCA, Inc. (''NYSE ARCA℠'') to the NYSE

The Exchange further proposes that if a listing company transferring from NYSE Arca℠ to the NYSE was assigned a NYSE Arca Lead Market Maker unit, that is also a registered NYSE DMM unit, the listing company may waive the allocation process pursuant to Rule 103B and select as its registered DMM unit the same unit that was previously assigned as the NYSEArca Lead Mark Maker unit. Alternatively, the Exchange proposes that the listing company can choose to follow the regular allocation process and refer the matter for allocation through the allocation process pursuant to NYSE Rule 103B.[50]

M. Conforming Changes to NYSE Rule 476a, NYSE Rule 123E and NYSE Listed Manual Section 106.02

1. NYSE Rule 476A

The Exchange seeks to make a conforming amendment to NYSE Rule 476A by removing failure to complete the SPEQ from the list of minor rule violations. NYSE Rule 476A provides for the imposition of fines for Minor Violation(s) of NYSE Rules. The Supplementary Material of NYSE Rule 476A enumerates the specific rules and conduct eligible for the imposition of a fine. Included in this list is ''Participation in the DMM Performance Evaluation Questionnaire (SPEQ) Process (Rule 103A).'' Since the Exchange proposes the elimination of the SPEQ process in its new allocation policy, the Exchange further proposes to amend NYSE Rule 476A to reflect this rescission.

2. NYSE Rule 123E

The Exchange also seeks to make conforming amendments to NYSE Rule 123E to change DMM ''organization'' to DMM ''unit'' and ''stock'' to ''security'' throughout the rule. The Exchange further proposes to delete and replace all references to the Quality of Markets Committee and the Market Performance Committee with ''the Exchange.''[51] Given the proposed changes to NYSE Rule 103A that rescind the Market Performance Committee's responsibility to monitor DMM performance, the Exchange proposes to assume responsibility for conducting a review of a proposed DMM combination. Similarly, the Exchange proposes to make a conforming amendment to eliminate the DMM performance measures from NYSE Rule 123E that also are proposed for deletion in connection with the proposed amendments to NYSE Rule 103B. The Exchange further proposes to correct a typographical error in Rule 123E.

3. NYSE Listed Company Manual

The Exchange proposes to make conforming changes to Section 106.02 of the NYSE Listed Company Manual. Currently Section 106.02 provides in pertinent part:

As soon as the Exchange makes the allocation decision, the company is

[39] *Id.*

[40] Proposed NYSE Rule 103B, Section VI(A)(2).

[41] *Id.*

[42] *See* Rule 12a–4 under the Act; 17 CFR 240.12a–4; *See also* NYSE Listed Company Manual, Section 703.03(O).

[43] Proposed NYSE Rule 103B, Section VI(A)(4). The Exchange Market Watch, Security Operations, Records Management Division is responsible for assigning rights to the DMM unit.

[44] Proposed NYSE Rule 103B, Section VI(D)(1).

[45] *Id.*

[46] Proposed NYSE Rule 103B, Section VI(D)(3).

[47] Proposed NYSE Rule 103B, Section VI(D)(4).

[48] Proposed NYSE Rule 103B, Section VI(H).

[49] *Id.*

[50] Proposed NYSE Rule 103B, Section VIII.

[51] In March 2006 after the NYSE's business combination with Archipelago Holdings, Inc., the Quality of Markets Committee ceased to exist upon completion of the revised corporate structure.

immediately notified by telephone and in writing of the name of the specialist unit, selected background information on the unit and the reasons why the unit was selected.

Section 106.02 gives the reader the impression that the Exchange is always responsible for the selection of the specialist unit (now DMM unit) to be allocated a listing company's security. The Exchange proposes to clarify Section 106.02 by amending it to acknowledge that the company can delegate the allocation decision to the Exchange.

N. Provisions for Allocation of Securities Issued by NYSE or its Affiliates

Currently, Section IX of NYSE Rule 103B permits the NYSE, as the issuer of its own security, to select the pool of DMM units that it wishes to consider for allocation of its security, instead of having the DMM units be selected by the Allocation Committee. Because the Exchange proposes to eliminate the role of the Allocation Committee, and instead provide all issuers with the ability to select the pool of eligible DMM units that they wish to consider for allocation of their securities, this section of NYSE Rule 103B no longer is necessary.

III. Discussion and Findings

The Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2 and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[52] Specifically, the Commission believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[53] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Commission believes that it is appropriate for the Exchange to establish rules and procedures governing the allocation of securities to its DMM units. In this regard, the Commission believes that the Exchange's proposal to establish an allocation system based on an objective measure, which would be used to determine a DMM unit's eligibility to participate in the allocation process based on its ability to meet a specific quoting requirement, is reasonable and consistent with the Act. The Commission believes that it is important for the Exchange to provide an inducement to its market makers that can help improve the quality of NYSE's market. By establishing objective criteria for allocations of securities that are based on the percentage that a DMM unit maintained a bid and an offer at the NBBO for a specified time period, the Exchange will provide DMM units with transparent and unambiguous standards that they need to attain, if they wish to receive security allocations. Moreover, the Commission believes that greater issuer participation in the allocation and reallocation process may provide the issuer with greater choice in the assignment of a DMM unit and the DMM unit with a greater incentive to perform optimally.

The Commission also believes that it is reasonable for the Exchange to eliminate the use of the SPEQ, along with several other performance measures, including SuperDot Turnaround and responses to administrative messages, since these performance criteria no longer are meaningful in the context of security allocations, given the Exchange's current electronic environment. The Commission believes that it is reasonable for the listed issuer to either select a DMM unit or delegate such selection to the Exchange Selection Panel. Further, in the event of an egregious situation that indicates a security is to be reallocated, the Commission notes that a DMM unit would have the right to appeal any reallocation decision to the Exchange's Board of Directors. Accordingly, the Commission believes that the Exchange's proposed allocation and reallocation process is reasonable and consistent with the Act.

The Commission further believes that it is reasonable for the Exchange to codify its current practice in NYSE Rule 103B that a warrant issued by a listed company and traded on the Exchange is allocated to the DMM unit registered in the underlying security of the listed company. Further, the Commission believes that it is reasonable for rights, that are not considered by the Exchange to be listed securities, to not be subject to the NYSE Rule 103B, Section III allocation process.

Lastly, the Commission believes that it is reasonable and consistent with the Act for a DMM unit that is ineligible to receive a new allocation, pursuant to proposed NYSE Rule 103B, Section VI(A) through (D), due to its failure to meet the requirements of proposed NYSE Rule 103B, Sections II(D) and (E), to remain eligible to receive an allocation pursuant to proposed NYSE Rule 103B, Section VI. Specifically, a DMM unit that is ineligible to receive a new allocation due to its failure to meet the requirements of NYSE Rule 103B, Section II(D) and (E) would remain eligible to receive current allocation of the spin-off company or current allocation of the listing of related companies, or current allocation of the relisting of the listed company; or current allocation of the common stock listing after the preferred stock listing; or the current allocation of certain types of company listed mergers. The Commission believes that there may be less disruption to the allocation process if the DMM unit were able to remain eligible to receive securities allocations, pursuant to NYSE Rule 103B, Section VI, in those discreet instances discussed above, even though the DMM unit may not be otherwise eligible to receive new securities allocations.

The Commission notes, however, that if a DMM unit is ineligible from participating in an allocation as set forth in proposed NYSE Rule 103B, Section III, at the time of a subsequent new closed-end management fund investment company listing (within the designated nine-month period), that DMM unit would not be included for consideration for subsequent listings.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2008–52), as modified by Amendment Nos. 1, 2 and 3, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26106 Filed 10–31–08; 8:45 am]

BILLING CODE 8011–01–P

[52] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[53] 15 U.S.C. 78(f)(b)(5).

[54] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Forms 2, 3A&B, 3C

Title: The Selective Service System Change of Information, Correction/ Change Form and Registration Status forms.

Need and/or Use: To insure the accuracy and completeness of the Selective Service registration data.

Respondents: Registrants are required to report changes or corrections in data submitted on SSS Form 1.

Frequency: When changes in a registrant's name or address occur.

Burden: The reporting burden is two minutes or less per respondent.

SSS Form—402

Title: Uncompensated Registrar Appointment Form.

Need and/or Use: Is used to verify the official status of applicants for the position of Uncompensated Registrars and to establish authority for those appointed to perform as Selective Service System Registrars.

Respondents: United States citizens over the age of 18.

Frequency: One-time.

Burden: The reporting burden is three minutes or less per respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: October 15, 2008.

Ernest E. Garcia,

Deputy Director.

[FR Doc. E8–26094 Filed 10–31–08; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11490 and # 11491]

California Disaster # CA–00126

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 10/28/2008.

Incident: Marek and Sesnon Wildland Fires.

Incident Period: 10/12/2008 and continuing.

Effective Date: 10/28/2008.

Physical Loan Application Deadline Date: 12/29/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 07/28/2009.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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: Los Angeles.

Contiguous Counties: California: Kern, Orange, San Bernardino, Ventura.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
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 is 11490 5 and for economic injury is 11491 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 28, 2008.

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E8–26167 Filed 10–31–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11487]

Indiana Disaster Number IN–00027

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment 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: 10/24/2008.

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: The notice of the President's major disaster declaration for private non-profit organizations in the state of Indiana, dated 09/23/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Decatur, Dubois, Floyd, Franklin, Gibson, Jackson, Lawrence, Martin, Newton, Ohio, Orange, Perry, Pike, Rush, Spencer, Union, Vanderburgh, Warrick.

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. E8–26151 Filed 10–31–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11479]

Kentucky Disaster Number KY–00017

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for

the Commonwealth of Kentucky (FEMA–1802–DR), dated 10/09/2008.

Incident: Severe wind storm associated with Tropical Depression Ike.

Incident Period: 09/14/2008 through 09/15/2008.

Effective Date: 10/21/2008.

Physical Loan Application Deadline Date: 12/08/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 07/09/2009.

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 Commonwealth of Kentucky, dated 10/09/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Kenton.

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. E8–26152 Filed 10–31–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11480]

Oklahoma Disaster Number OK–00025

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1803–DR), dated 10/09/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 09/12/2008 through 09/19/2008.

Effective Date: 10/24/2008.

Physical Loan Application Deadline Date: 12/08/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 07/09/2009.

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 OKLAHOMA, dated 10/09/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Garfield.

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. E8–26150 Filed 10–31–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11488]

Texas Disaster Number TX–00312

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment 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.

DATES: *Effective Date:* 10/24/2008.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of TEXAS, dated 09/13/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Anderson, Bowie, Leon, Milam.

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. E8–26157 Filed 10–31–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than January 2, 2009.

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 2130–0505, or OMB control number 2130–0556, or OMB control number 2130–0506.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@dot.gov*, or to Ms. Nakia Jackson at *nakia.jackson@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent

notice and include them in its information collection submission to OMB for approval.

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: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60 days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved ICRs that FRA will submit for clearance by OMB as required under the PRA:

Title: Inspection and Maintenance Standards for Steam Locomotives.

OMB Control Number: 2130–0505.

Abstract: The Locomotive Boiler Inspection Act (LBIA) of 1911 required each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original LBIA was expanded to cover the entire steam locomotive and tender and all its parts and appurtenances. This Act then requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. The collection of information is used by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. The collection of information is also used by FRA Federal inspectors to verify that necessary safety inspections and tests have been completed and to ensure that steam locomotives are indeed ''safe and suitable'' for service and are properly operated and maintained.

Affected Public: Businesses.

Respondent Universe: 82 owners/operators.

Frequency of Submission: On occasion; annually.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
230.6—Waivers	82 owners	2 waiver letters	1 hour	2
230.12—Conditions for movement—Non-Complying Locomotives.	82 owners/operators	5 tags	6 minutes	1
230.14—31 Service Day Inspection	82 owners/operators	100 reports	20 minutes	33
—Notifications	82 owners/operators	2 notifications	5 minutes .17.	
230.15—92 Service Day Inspection	82 owners/operators	100 reports	20 minutes	33
230.16—Annual Inspection—Reports	82 owners/operators	100 reports	30 minutes	50
—Notifications	82 owners/operators	100 notifications	5 minutes	8
230.17—1,472 Service Day Inspection	82 owners/operators	10 forms	30 minutes	5
230.20—Alteration and Repair Reports for Steam Locomotive Boilers.	82 owners/operators	5 reports	1 hour	5
230.21—Steam Locomotive Number Change	82 owners/operators	1 document	2 minutes	.033
230.33—Welded Repairs/Alterations—Written Request to FRA for Approval—Unstayed Surfaces.	82 owners/operators	5 letters	10 minutes	1
	82 owners/operators	5 letters	10 minutes	1
230.34—Riveted Repairs/Alterations	82 owners/operators	10 requests	5 minutes	1
230.49—Setting of Safety Relief Valves	82 owners/operators	38 tags	2 minutes	1
230.96—Main, Side, and Valve Motion Rods	82 owners/operators	1 letter	10 minutes	.17
RECORDKEEPING REQUIREMENTS				
230.13—Daily Inspection Reports	82 owners/oper.	3,650 reports	2 minutes	122
230.17—1,472 Service Day Inspection	82 owners/operators	10 reports	15 minutes	3
230.18—Service Day Report	82 owners/operators	150 reports	15 minutes	38
230.19—Posting of Copy	82 owners/operators	300 forms	1 minute	5
230.41—Flexible Staybolts with Caps	82 owners/operators	10 entries	1 minute	.17
230.46—Badge Plates	82 owners/operators	3 reports	30 minutes	2
230.47—Boiler Number	82 owners/operators	1 stamping	15 minutes	.25
230.75—Stenciling Dates of Tests and Cleaning	82 owners/operators	50 tests	15 minute	1

REPORTING BURDEN—Continued

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
230.98—Driving, Trailing, and Engine Truck Axles—Journal Diameter Stamped.	82 owners/operators	1 stamp	15 minutes	.25
230.116—Oil Tanks	82 owners/operators	30 signs	1 minute	1

Total Responses: 4,689.

Estimated Total Annual Burden: 314 hours.

Status: Extension of a Currently Approved Collection.

Title: U.S. Locational Requirement for Dispatching U.S. Rail Operations.

OMB Control Number: 2130–0556.

Abstract: Part 241 requires, in the absence of a waiver, that all dispatching of railroad operations that occurs in the United States be performed in this country, with a minor exception. A railroad is allowed to conduct extraterritorial dispatching from Mexico or Canada in emergency situations, but only for the duration of the emergency. A railroad relying on the exception must provide written notification of its action to the FRA Regional Administrator of each FRA region in which the railroad operation occurs; such notification is not required before addressing the emergency situation. The information collected under this rule will be used as part of FRA's oversight function to ensure that extraterritorial dispatchers comply with applicable safety regulations.

Affected Public: Railroads.

Respondent Universe: 4 Railroads.

Frequency of Submission: On Occasion.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
241.7—Waivers—(a) General	4 railroads	1 waiver petition	4 hours	4 hours.
(c) Fringe Border Disptaching	4 railroads	1 waiver petition	4 hours	4 hours.
241.9—Prohibition against extraterritorial dispatching; exceptions—Notification.	4 railroads	1 notification	8 hours	8 hours.
241.11—Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher; exceptions.	4 railroads	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.
241.13—Prohibitions against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher; exceptions.	4 railroads	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.
241.15—Penalties—False Reports/Records.	$628	None	N/A	N/A	N/A.

Total Responses: 3.

Estimated Total Annual Burden: 16 hours.

Title: Identification of Cars Moved in Accordance with Order 13528.

OMB Control Number: 2130–0506.

Abstract: This collection of information identifies a freight car being moved within the scope of Order 13528 (now codified under 49 CFR 232.3). Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR Part 232.3(d)(3), which requires that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under the authority of the order. § 232.3(d)(3) does not require retaining cards or tags. When a car bearing a tag for movement under this provision arrives at its destination, the tags are simply removed.

Affected Public: Railroads.

Respondent Universe: 685 Railroads.

Frequency of Submission: On occasion.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
232.3—Identification of Cars Moved in Accordance with Order 13528.	685 Railroads	800 tags	5 minutes	67

Total Responses: 800

Estimated Total Annual Burden: 67 hours.

Status: Extension of a Currently Approved Collection.

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 28, 2008.

Belinda Ashton,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E8–26088 Filed 10–31–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Maritime Security Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Extension of deadline for receiving applications for one Maritime Security Program (MSP) Operating Agreement, from November 3, 2008 to November 18, 2008.

SUMMARY: On October 2, 2008, the Maritime Administration published a request in the **Federal Register** for applications for one eligible vessel to fill one MSP Operating Agreement in accordance with the provisions of Subtitle C, Title XXXV of the National Defense Authorization Act for Fiscal Year 2004, the Maritime Security Act of 2003 (MSA 2003). The MSA 2003 authorizes the creation of a Maritime Security Program (MSP) that establishes a fleet of active, commercially viable, privately owned vessels to meet national defense and other security requirements and to maintain a United States presence in international commercial shipping. This request for applications provided, among other things, application criteria and a deadline for submitting applications for enrollment of one vessel in the MSP. The deadline established for the receipt of applications in that notice was established as close of business, eastern-time, November 3, 2008. In order to provide sufficient time for interested parties to prepare applications in response to that notice, the deadline is hereby extended to close of business, eastern-time, November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Peter E. Petrelis, Acting Deputy Director, Office of Sealift Support, Maritime Administration, Telephone 202–366–6252.

Dated: October 28, 2008.

By Order of the Maritime Administration.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–26087 Filed 10–31–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0164]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (NHTSA).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: This notice solicits public comments on continuation of the requirements for the collection of information on safety standards. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of information on eight Federal motor vehicle safety standards (FMVSSs) and one regulation, for which NHTSA intends to seek OMB approval. The information collection pertains to requirements that specify certain safety precautions regarding items of motor vehicle equipment must appear in the vehicle owner's manual.

DATES: Comments must be received on or before January 2, 2009.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

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

You may call the Docket Management Facility at 202–366–9826.

Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ms. Lori Summers, NHTSA, 1200 New Jersey Avenue, SE., Room W43–314, NVS–112, Washington, DC 20590.

Ms. Lori Summers telephone number is (202) 366–1740. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) *Title:* Consolidated Vehicle Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment.

OMB Control Number: 2127–0541.

Form Number: This collection of information uses no standard form.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of a currently approved collection.

Affected Public: Individuals, households, business, other for-profit, not-for-profit, farms, Federal Government and state, local or tribal government.

Abstract: 49 U.S.C. 30111 authorizes the issuance of Federal motor vehicle safety standards (FMVSSs) and regulations. The agency, in prescribing a FMVSS or regulation, considers available relevant motor vehicle safety data, and consults with other agencies, as it deems appropriate. Further, the statute mandates that in issuing any FMVSS or regulation, the agency considers whether the standard or regulation is ''reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed,'' and whether such a standard will contribute to carrying out the purpose of the Act. The Secretary is authorized to invoke such rules and regulations as deemed necessary to carry out these requirements. Using this authority, the agency issued the following FMVSS and regulations, specifying that certain safety precautions regarding items of motor vehicle equipment appear in the vehicle owner's manual to aid the agency in achieving many of its safety goals: FMVSS No. 108, ''Lamps, reflective devices, and associated equipment,'' FMVSS No. 110, ''Tire selection and rims,'' FMVSS No. 138, ''Tire pressure monitoring systems,'' FMVSS No. 202, ''Head restraints,'' FMVSS No. 205, ''Glazing materials,'' FMVSS No. 208, ''Occupant crash protection,'' FMVSS No. 210, ''Seat belt assembly anchorages,'' FMVSS No. 213, ''Child restraint systems,'' Part 575 Section 103, ''Camper loading,'' and Part 575 Section 105, ''Utility vehicles.'' This notice requests comments on the information collections of these FMVSSs and regulations.

Description of the need for the information and proposed use of the information: In order to ensure that manufacturers are complying with the FMVSS and regulations, NHTSA requires a number of information collections in FMVSS Nos. 108, 110, 138, 202, 205, 208, 210, and 213, and Part 575 Sections 103 and 105. FMVSS No. 108, ''Lamps, reflective devices, and associated equipment.'' This standard requires that certain lamps and reflective devices with certain performance levels be installed on motor vehicles to assure that the roadway is properly illuminated, that vehicles can be readily seen, and the signals can be transmitted to other drivers sharing the road, during day, night and inclement weather. Since the specific manner in which headlamp aim is to be performed is not regulated (only the performance of the device is), aiming devices manufactured or installed by different vehicle and headlamp manufacturers may work in significantly different ways. As a consequence, to assure that headlamps can be correctly aimed, instructions for proper use must be part of the vehicle as a label, or optionally, in the vehicle owner's manual.

FMVSS No. 110, ''Tire selection and rims.'' This standard specifies requirements for tire selection to prevent tire overloading. The vehicle's normal load and maximum load on the tire shall not be greater than applicable specified limits. The standard requires a permanently affixed vehicle placard specifying vehicle capacity weight, designated seating capacity, manufacturer-recommended cold tire inflation pressure, and manufacturer's recommended tire size. The standard further specifies rim construction requirements, load limits of non-pneumatic spare tires, and labeling requirements for non-pneumatic spare tires, including a required placard. Owner's manual information is required for ''Use of Spare Tire.'' FMVSS No. 110 will require additional owner's manual information on the revised vehicle placard and tire information label, on revised tire labeling, and on tire safety and load limits and terminology.

FMVSS No. 138, ''Tire pressure monitoring systems,'' specifies requirements for a tire pressure monitoring system to warn the driver of an under-inflated tire condition. Its purpose is to reduce the likelihood of a vehicle crash resulting from tire failure due to operation in an under-inflated condition. The standard requires the Owner's Manual to include specific information on the low pressure warning telltale and the malfunction indicator telltale. In a final rule published April 8, 2005, most vehicles with a gross vehicle weight rating of 4,536 kg or less (e.g., excluding motorcycles) were required to be equipped with a tire pressure monitoring system by September 1, 2008 and include related safety information in the Owner's Manual.

FMVSS No. 202, ''Head restraints.'' This standard specifies requirements for head restraints. The standard, which seeks to reduce whiplash injuries in rear collisions, currently requires head restraints for front outboard designated seating positions in passenger cars and in light multipurpose passenger vehicles, trucks and buses. In a final rule published on May 4, 2007 (69 FR 74880), FMVSS No. 202 will require that vehicle manufacturers include information about appropriate adjustment of front outboard seat head restraints in Owner's Manuals for 80 percent of vehicles manufactured on or after September 1, 2009 and of front outboard seats of all vehicles manufactured on or after September 1, 2010. The final rule will require that vehicle manufacturers include information about appropriate adjustment of optionally provided rear outboard seat head restraints in Owner's Manuals for 80 percent of vehicles manufactured with rear head restraints after September 1, 2010 and all vehicles with optionally provided rear outboard head restraints manufactured on or after September 1, 2011.

FMVSS No. 205, ''Glazing materials.'' This standard specifies requirements for all glazing materials used in windshields, windows, and interior partitions of motor vehicles. Its purpose is to reduce the likelihood of lacerations and to minimize the possibility of occupants penetrating the windshield in a crash. More detailed information regarding the care and maintenance of such glazing items, as the glass-plastic windshield, is required to be placed in the vehicle owner's manual.

FMVSS No. 208, ''Occupant crash protection.'' This standard specifies requirements for both active and passive occupant crash protection systems for passenger cars, multipurpose passenger vehicles, trucks and small buses. Certain safety features, such as air bags, or the care and maintenance of air bag systems, are required to be explained to the owner by means of the owner's manual. For example, the owner's manual must describe the vehicle's air bag system and provide precautionary information about the proper positioning of the occupants, including children. The owner's manual must also warn that no objects, such as shotguns carried in police cars, should be placed over or near the air bag covers.

FMVSS No. 210, ''Seat belt assembly anchorages.'' This standard specifies requirements for seat belt assembly anchorages to ensure effective occupant restraint and to reduce the likelihood of failure in a crash. The standard requires that manufacturers place the following information in the vehicle owner's manual: a. An explanation that child restraints are designed to be secured by means of the vehicle's seat belts, and, b.

A statement alerting vehicle owners that children are always safer in the rear seat.

FMVSS No. 213, ''Child restraint systems.'' This standard specifies requirements for child restraint systems and requires that manufacturers provide consumers with detailed information relating to child safety in air bag equipped vehicles. The vehicle owner's manual must include information about the operation and do's and don'ts of built-in child seats.

Part 575 Section 103, ''Camper loading.'' This standard requires that manufacturers of slide-in campers designed to fit into the cargo bed of pickup trucks affix a label to each camper that contains information relating to certification, identification and proper loading, and to provide more detailed loading information in the owner's manual of the truck.

Part 575 Section 105, ''Utility vehicles.'' This regulation requires manufacturers of utility vehicles to alert drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated on paved roads. For example, the vehicle owner's manual is required to assure that headlamps can be correctly aimed, instructions for proper use must be part of the vehicle as a label, or optionally, in the vehicle owner's manual.

Estimated Total Annual Burden: 3,051 hours.

Estimated Number of Respondents: 22.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Comments are invited on:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.[1] We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using the Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[2]

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html*. DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf*.

How Can I Be Sure That My Comments Were Received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[3]

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

Will the Agency Consider Late Comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

How Can I Read the Comments Submitted by Other People?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: October 28, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–26096 Filed 10–31–08; 8:45 am]

BILLING CODE 4910–59–P

[1] *See* 49 CFR 553.21.

[2] Optical Character Recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

[3] *See* 49 CFR 512.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC—F–21030]

Stagecoach Group PLC and Coach USA, Inc., et al.—Acquisition of Control—New Today Bus Corp. and New Today Bus, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Stagecoach Group PLC (Stagecoach), a noncarrier, its noncarrier intermediate subsidiaries (Stagecoach Transport Holdings plc, SCUSI Ltd., Coach USA Administration, Inc.), Coach USA, Inc. (Coach USA), and ASTI, Inc. d/b/a Coach USA (ASTI), a motor passenger carrier (MC–252353) controlled by Coach USA (collectively,

applicants), have filed an application under 49 U.S.C. 14303 for acquisition and operation of certain assets of New Today Bus Corp. (MC–651183) and New Today Bus, Inc. (MC–657415) (collectively, New Today). Upon acquisition, New Today will cease operations and ASTI will assume such operations. The Board has tentatively approved the transaction, and if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8.

DATES: Comments must be filed by December 18, 2008. Applicants may file a reply by January 2, 2009. If no comments are filed by December 18, 2008, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–21030 to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, send one copy of comments to the Applicants' representatives: David H. Coburn and Scott M. Mirelson, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245–0359 [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Stagecoach, headquartered in Scotland, is one of the world's largest providers of passenger transportation services. It operates in several countries, including the United States, through a series of operating divisions. Coach USA is a Delaware corporation that currently controls numerous passenger carriers, including ASTI, one of the subjects of this transaction.[1] Coach USA acquired control of ASTI in 1996. ASTI is currently seeking FMCSA approval to operate New Today's regular routes, including: (1) Between New York, NY, and Washington, DC; (2) New York and Baltimore, MD; and (3) New York and Philadelphia, PA. ASTI also plans to change its official name from ASTI d/b/a Coach USA to ASTI d/b/a Todays Bus.

Under the proposed transaction, applicants seek permission to acquire certain assets of New Today, including New Today's customer lists, certain contracts, sales records, certain leases and tangible property, as well as certain trademarks and trade names, including ''Today's Bus,'' ''Todays Bus,'' and ''New Today Bus.'' New Today currently provides regular route service between several points in the Mid-Atlantic States, as described above. The proposed transaction contemplates the cessation of operations by New Today on these and other routes. Utilizing New Today's assets in combination with ASTI's, applicants state that there will be a seamless continuation of services previously provided by New Today through ASTI.

Under 49 U.S.C. 14303, the Board must approve and authorize a transaction it finds consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Applicants have submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), and a statement that the 12-month aggregate gross operating revenues of all motor carrier parties and all motor carriers controlling, controlled by, or under common control with any party exceeded $2 million. Applicants state that the proposed transaction will have no impact on the adequacy of transportation services available to the public inasmuch as the operations of New Today will remain unchanged, and that fixed charges associated with the proposed transaction will not be adversely impacted. Applicants state that ASTI is evaluating its employment needs with a view to employing qualified personnel that are currently employed by New Today to operate the relevant services. Additional information, including a copy of the application, may be obtained from the applicants' representatives.

On the basis of the application, the Board finds that the proposed acquisition of assets is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective December 18, 2008, unless timely opposing comments are filed.

4. A copy of this decision will be served on: (1) U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Decided: October 27, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Jeff Herzig,

Clearance Clerk.

[FR Doc. E8–26126 Filed 10–31–08; 8:45 am]

BILLING CODE 4915–01–P

[1] Together, Stagecoach and Coach USA control 65 motor passenger carriers. Stagecoach and Coach USA have also received tentative authority to control an additional motor passenger carrier in *Stagecoach Group PLC and Coach USA, Inc., et al.—Acquisition of Control-Eastern Travel & Tour, Inc.,* STB Docket No. MC—F–21029 (STB served Sept. 18, 2008).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled, ''Release of Non-Public Information—12 CFR 4, Subpart C.''

DATES: You should submit written comments by January 2, 2009.

ADDRESSES: You should direct all written comments to: Communications

Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, *Attention:* 1557–0200, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to: OCC Desk Officer, 1557–0200, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Release of Non-Public Information—12 CFR 4, Subpart C.

OMB Number: 1557–0200.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information requirements require individuals who are requesting non-public OCC information to provide the OCC with information regarding the requester's legal grounds for the request. Release of non-public OCC information when the requester did not have sufficient legal grounds to obtain the information would inhibit open consultation between a bank and the OCC, thereby impairing the OCC's supervisory and regulatory mission. The OCC is entitled, under statute and case law, to require requesters to demonstrate that they have sufficient legal grounds for the OCC to release non-public OCC information. The OCC needs to know the requester's legal grounds to determine if it should release the requested non-public OCC information.

The information requirements in 12 CFR part 4, subpart C, are located as follows:

- 12 CFR 4.33: Request for non-public OCC records or testimony.
- 12 CFR 4.35(b)(3): Third parties requesting testimony.
- 12 CFR 4.37(a)(2): OCC former employee notifying OCC of subpoena.
- 12 CFR 4.37(a) and (b): Limitation on dissemination of released information.
- 12 CFR 4.39(d): Request for authenticated records or certificate of nonexistence of records.

The OCC uses the information to process requests for non-public OCC information and to determine if sufficient grounds exist for the OCC to release the requested information or provide testimony. This information collection makes the mechanism for processing requests more efficient and facilitates and expedites the OCC's release of non-public information and testimony to the requester.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Number of Respondents: 110.

Total Annual Responses: 170.

Frequency of Response: On occasion.

Total Annual Burden: 467 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 28, 2008.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. E8–26093 Filed 10–31–08; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing a new fee schedule applicable to transfers of U.S. Treasury book-entry securities maintained on the National Book-Entry System (NBES) that occur on or after January 2, 2009. The basic fee for the transfer of a Treasury book-entry security will increase from $.28 to $.30. The Federal Reserve funds movement fee will remain at $.05, resulting in a combined fee of $.35 for each Treasury securities transfer. In addition to the basic fee, off-line transfers have a surcharge. The surcharge for an off-line Treasury book-entry transfer will remain $33.00.

DATES: *Effective Date:* January 2, 2009.

FOR FURTHER INFORMATION CONTACT: James Sharer, Director of Book-Entry and Program Support, Bureau of the Public Debt, 799 9th Street NW., Washington, DC 20239, (202) 504–3550; Kristina Yeh, Financial Systems Analyst, Bureau of the Public Debt, 799 9th Street, NW, Washington, DC 20239, (202) 504–3550.

SUPPLEMENTARY INFORMATION: The Department of the Treasury has established a fee structure for the transfer of Treasury book-entry securities maintained on NBES. Treasury reassesses this fee structure periodically, based on our review of the latest book-entry costs and volumes.

For each Treasury securities transfer or reversal sent or received on or after January 2, 2009, the basic fee will increase to $.30 from $.28. The surcharge for an off-line Treasury book-entry transfer will remain $33.00.

The basic transfer fee assessed to both sends and receives is reflective of costs associated with the processing of a security transfer. The off-line surcharge reflects the additional processing costs associated with the manual processing of off-line securities transfers.

The Treasury does not charge a fee for account maintenance, the stripping and reconstitution of Treasury securities, the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

The fees described in this notice apply only to the transfer of Treasury

book-entry securities held on NBES. Information concerning fees for book-entry transfers of Government Agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System on November 3, 2008 (FR Doc E8–26101).

The following is the Treasury fee schedule that will take effect on January 2, 2009 for the book-entry transfers on NBES:

TREASURY-NBES FEE SCHEDULE [1]

[Effective January 2, 2009; (In Dollars)]

Transfer type	Basic fee	Off-line surcharge	Funds [2] movement fee	Total fee
On-line transfer originated	.30	N/A	.05	.35
On-line transfer received	.30	N/A	.05	.35
On-line reversal transfer originated	.30	N/A	.05	.35
On-line reversal transfer received	.30	N/A	.05	.35
Off-line transfer originated	.30	33.00	.05	33.35
Off-line transfer received	.30	33.00	.05	33.35
Off-line account switch received	.30	.00	.05	.35
Off-line reversal transfer originated	.30	33.00	.05	33.35
Off-line reversal transfer received	.30	33.00	.05	33.35

[1] The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

Authority: 31 CFR 357.45.

Dated: October 22, 2008.

Kenneth E. Carfine,

Fiscal Assistant Secretary.

[FR Doc. E8–26100 Filed 10–31–08; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (22–0839)]

Agency Information Collection: Emergency Submission for OMB (Yellow Ribbon) Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA), has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). The reason for the emergency clearance is to determine which institutions of higher learning (IHLs) will be participating in the Yellow Ribbon Program, the maximum number of individuals for whom the IHL will make contributions in any given academic year, and the percentage of outstanding established charges the IHL will agree to waive. OMB has been requested to act on this emergency clearance request by December 31, 2008.

DATES: Comments must be submitted on or before November 17, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–New (22–0839)'' in any correspondence

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–New (22–0839).''

SUPPLEMENTARY INFORMATION:

Title: Yellow Ribbon Agreement (Under Title 38 U.S.C. Chapter 33), VA Form 22–0839.

OMB Control Number: 2900–New (22–0839).

Type of Review: New collection.

Abstract: Public Law 110–252 created a new educational assistance benefit, chapter 33, which contains provisions that requires VA to collect information in order to administer the Yellow Ribbon Program (authorized under the new benefit). Title 38 U.S.C. 3317 requires VA to enter into an agreement with schools wishing to participate in Yellow Ribbon Program. The agreement must state the beginning and ending dates of the academic year for which the school will waive costs under the Yellow Ribbon Program, the maximum number of individuals for whom the school will make contributions in the specified academic year, and the percentage of outstanding established charges the school will waive for each Yellow Ribbon participant in the specified academic year. VA is required to match each additional dollar waived by the school not to exceed 50 percent of the outstanding established charges. The statute further requires that VA post the information on a Web site for public viewing. In order to have sufficient time to post the information on the Web site (after processing received requests) and amend/update systems to issue Yellow Ribbon payments, VA will issue requests for participation in December of each calendar year and require that schools provide responses no later than February 15th of the following year.

Affected Public: Business or other for profit and not for profit institutions.

Estimated Annual Burden: 750 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time per year.

Estimated Number of Respondents: 4,500.

Dated: October 24, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–26127 Filed 10–31–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
November 3, 2008

Part II

Environmental Protection Agency

40 CFR 355 and 370

Emergency Planning and Community Right-to-Know Act; Amendments to Emergency Planning and Notification; Emergency Release Notification and Hazardous Chemical Reporting; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 355 and 370

[EPA–HQ–SFUND–1998–0002; FRL–8733–5]

RIN 2050–AE17

Emergency Planning and Community Right-to-Know Act; Amendments to Emergency Planning and Notification; Emergency Release Notification and Hazardous Chemical Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing changes to the Emergency Planning Notification, Emergency Release Notification and Hazardous Chemical Reporting regulations that were proposed on June 8, 1998. EPA proposed four major revisions and provided draft guidance on various reporting options that States and local agencies may wish to consider in implementing the hazardous chemical reporting requirements. This action addresses only those changes proposed under the heading ''*Other Regulatory Changes*'' described in the preamble to the 1998 proposed rule. This final action includes minor revisions to the Emergency Planning Notification, Emergency Release Notification and Hazardous Chemical Reporting regulations, codifying statutory requirements, and clarifying certain interpretations and policy statements that EPA has provided to the regulated community. This final action does not affect public access to any of the information provided under the Emergency Planning Notification, Emergency Release Notification and Hazardous Chemical Reporting regulations. In addition to the regulatory changes, the Agency is finalizing the plain language format of the regulations. Each section in these regulations will be re-numbered and tables will be added for further clarification. Improving the clarity of the regulatory requirements will make the rule easier to understand and improve compliance.

DATES: This final rule is effective on December 3, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–SFUND–1998–0002. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Superfund Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20004; telephone number: (202) 564–8019; fax number: (202) 564–2620; e-mail address: *jacob.sicy@epa.gov.* Also contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or (703) 412–9810 (in the Washington DC, metropolitan area). The Telecommunications Device for the Deaf (TDD) number is (800) 553–7672 or (703) 412–3323 (in the Washington, DC, metropolitan area.) You may wish to visit the Office of Emergency Management (OEM) Internet site at *http://www.epa.gov/emergencies.*

SUPPLEMENTARY INFORMATION: Here are the contents of today's preamble.

I. General Information
A. Who is Affected by This Rule?
B. What is the Statutory Authority for This Rule?
C. What is the Background for This Rulemaking?
II. What are the Regulatory Changes in This Rule?
A. Reporting of Mixtures Under EPCRA Sections 311 and 312 (40 CFR part 370)
1. Background of the Proposed Revisions for the Reporting of Mixtures
2. Summary of the Proposed Revisions for the Reporting of Mixtures
3. Organizational Changes to the Reporting of Mixtures in This Final Action
4. Final Action on Proposed Revision (1): Removing the Phrase ''The Total Quantity of the Mixture'' From § 370.28(b)(2)
5. Final Action on Proposed Revision (2): Clarifying How To Determine the Total Quantity of an EHS in Mixtures
6. Final Action on Proposed Revision (3): Adding a Provision for Determining the Quantity of a Non-EHS Hazardous Chemical Component in a Mixture
7. Final Action on Proposed Revision (4): Adding a Provision for Determining the Quantity of a Non-EHS Hazardous Chemical When Present in Pure Form and in Mixtures
B. Tier I and Tier II Inventory Forms and Instructions
1. Removal of Forms and Instructions From the Code of Federal Regulations
2. Revisions to the Forms and Instructions
C. Penalties for Noncompliance
D. Additional Changes to Parts 355 and 370 Regulations
E. Definitions
III. Statutory and Executive Orders
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132 (Federalism)
F. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)
G. Executive Order 13045
H. Executive Order 13211 (Energy Effects)
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Who is Affected by This Rule?

Entities that would be affected by this rule are those organizations and facilities subject to the Emergency Planning and Community Right-to-Know Act (EPCRA) and its implementing regulations found in 40 CFR parts 355 and 370. To determine whether your facility is affected by this action, you should carefully examine the sections below that explain who must comply with the rule. 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.

B. What is the Statutory Authority for This Rule?

This final rule is being issued under EPCRA, which was enacted as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499), (SARA). The Agency relies on EPCRA section 328 for general rulemaking authority.

C. What is the Background of This Rulemaking?

Title III of SARA (EPCRA) establishes authorities for emergency planning and preparedness, emergency release notification reporting, community right-to-know reporting, and toxic chemical release reporting. It is intended to encourage State and local planning and preparedness for releases of extremely hazardous substances and to provide the public, local governments, fire departments and other emergency officials with information concerning

chemical releases and the potential chemical risks in their communities. The implementing regulations for emergency planning, emergency release notification and the chemicals subject to these regulations (Extremely Hazardous Substances) are codified in 40 CFR part 355. The implementing regulations for community right-to-know reporting (or hazardous chemical reporting) are codified in 40 CFR part 370.

On June 8, 1998, EPA published a proposed rule (63 FR 31268) to streamline the reporting requirements under EPCRA, in particular, sections 311 and 312. EPA proposed four major revisions and provided draft guidance on various reporting options that State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs), and fire departments may wish to consider as they implement EPCRA sections 311 and 312. The four proposed revisions were: (1) Higher threshold levels for reporting gasoline and diesel fuel at retail gas stations; (2) relief from routine reporting for substances with minimal hazards and minimal risks; (3) relief from routine reporting for sand, gravel and rock salt; and (4) ''Other Regulatory Changes,'' such as: reporting of mixtures; removing the Tier I and Tier II inventory forms and instructions from the CFR, as well as some minor revisions to the forms and instructions; and some minor changes to the emergency planning and emergency release notification regulations (40 CFR part 355).

EPA finalized higher threshold levels for reporting gasoline and diesel fuel at retail gas stations on February 11, 1999 (64 FR 7031). In today's action, the Agency is finalizing only items in (4) above—*''Other Regulatory Changes,''* as discussed in section IV.B of the preamble to the 1998 proposed rule. The remaining two proposed revisions [(2) and (3) above] and the draft guidance related to EPCRA sections 311 and 312 for States and local government agencies may be finalized at a later date.

II. What are the Regulatory Changes in This Rule?

This section of the notice provides a brief summary of this final rule. Specifically, the changes in this final action include: (1) Finalizing some of the proposed revisions on applying threshold quantity and the reporting of mixtures under EPCRA sections 311 and 312; (2) removing the Tier I and II inventory forms and instructions from the CFR, as well as making some minor changes to the forms and instructions; and (3) codifying certain existing policies and interpretations in 40 CFR parts 355 and 370. Today's action also: (1) Re-writes the regulations in 40 CFR parts 355 and 370 in plain language, using a question and answer format; (2) re-numbers and re-organizes each section in 40 CFR parts 355 and 370; and (3) adds tables in order to improve the clarity and understanding of certain reporting requirements.

The proposed changes to determining whether the thresholds have been met or exceeded and reporting of mixtures under EPCRA sections 311 and 312 received the most comments. Commenters generally supported the regulatory changes discussed in the June 1998 preamble. Details on the significant comments received on mixture reporting and certain other aspects of the final rule are provided below. For a more complete discussion of all comments received and the Agency's response, please see the *Summary of Comments and Response* document that is in the Docket to today's rule as specified in the beginning of this notice.

A. Reporting of Mixtures Under EPCRA Sections 311 and 312 (40 CFR Part 370)

1. Background of the Proposed Revisions for the Reporting of Mixtures

Sections 311 and 312 of EPCRA apply to any facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for any hazardous chemical under the Occupational Safety and Health Administration (OSHA) and its implementing regulations. EPCRA Sections 311(a)(3) and 312(a)(3) contain the statutory provisions for reporting of mixtures containing hazardous chemicals. These provisions state that for a mixture that is a hazardous chemical, a facility may meet the reporting requirements of section 311 of EPCRA by submitting an MSDS for the mixture or an MSDS for each hazardous chemical component in the mixture. In lieu of submitting an MSDS for the mixture, a facility may submit a list that contains the mixture or the hazardous chemical components in the mixture. Section 311(a)(3) also states that if more than one mixture at a facility contains the same hazardous chemical, only one MSDS or one entry on the list of chemicals is necessary for that hazardous chemical. Similarly, a facility may meet the reporting requirements of section 312 by providing inventory information only for the mixture or for each hazardous chemical component in the mixture. In addition, section 312(a)(3) states that if more than one mixture at a facility contains the same hazardous chemical, only one listing on the inventory form is necessary for that hazardous chemical.

OSHA may require a facility owner or operator to prepare or have available an MSDS for a pure chemical, a mixture and/or its hazardous components. Therefore, owners and operators of facilities subject to EPCRA sections 311 and 312 may have MSDSs for pure chemicals, mixtures, and/or for individual hazardous chemical components in those mixtures. For facilities that have only pure chemicals on site, determining if the total amount of a hazardous chemical is at or above the reporting threshold is straightforward. However, in many cases, facilities have mixtures that contain hazardous chemical components, including both extremely hazardous substances (EHSs) and non-EHSs. Before the effective date of this final rule, 40 CFR part 370 specified how to determine if a reporting threshold has been met or exceeded for mixtures that contain EHSs. If the threshold is met, 40 CFR part 370 provided options to report either the hazardous chemical components or the mixture itself. 40 CFR part 370 did not provide options for determining if the reporting threshold has been met or exceeded for mixtures containing non-EHS hazardous chemical components. In the proposed rule, the Agency proposed to add requirements and/or options for determining if the reporting threshold has been met or exceeded and for reporting mixtures that contain non-EHS hazardous chemical components.

Although prior to the effective date of this final rule, the regulations in 40 CFR part 370 did not include requirements and/or options for determining if non-EHS hazardous chemical components in mixtures are at or above the reporting threshold, the Agency provided guidance on this issue in the preamble to the July 26, 1990 (55 FR 30632) final rule. In that preamble, EPA specified that, while aggregation of non-EHS hazardous chemical components present in mixtures is not required for determining if the reporting threshold is met, the facility may choose to aggregate if they wish to report by hazardous chemical components rather than reporting as mixtures. The July 1990 rule finalized the reporting thresholds under sections 311 and 312 and established uniform effective dates for all facilities subject to reporting under sections 311 and 312. Other revisions included finalizing the revision of the definition of the term ''facility'' to include subsurface operations, the implementation of all sections of EPCRA by Indian Tribes on Indian lands

as well as the treatment of mixtures in threshold calculations.

2. Summary of the Proposed Revisions for the Reporting of Mixtures

In the June 1998 proposed rule, the Agency proposed a number of revisions to 40 CFR 370.28 for applying threshold quantities and the reporting of mixtures under EPCRA sections 311 and 312. Specifically, the proposed revisions to § 370.28 were:

(1) Removing the phrase ''the total quantity of the mixture'' from § 370.28(b)(2);

(2) Adding a provision to clarify that, when determining the total quantity of an EHS present at a facility, the quantity of that substance present in a mixture must be included even if the total quantity of that particular mixture is also being counted toward the threshold level for that mixture;

(3) Adding a provision for applying the threshold quantity to a hazardous chemical component in a mixture when that hazardous chemical component is *not* an EHS; and

(4) Adding a provision for applying the threshold quantity to a non-EHS hazardous chemical when that chemical is present both by itself and as a component in a mixture.

EPA requested comments on these proposed revisions, as well as on the re-writing of the mixture reporting section in plain language, using a question and answer format. EPA received a total of 38 comments from industry, State and local governments, trade associations and environmental groups. In general, commenters supported codifying existing policies for the reporting of mixtures. However, several commenters opposed two of the proposed revisions. An overview of the comments received on each of the proposed revisions and the final actions being taken by the Agency are discussed below.

3. Organizational Changes to the Reporting of Mixtures in This Final Action

In addition to the four proposed revisions described above, EPA proposed re-organizing and re-numbering 40 CFR part 370. Commenters provided general support for re-organizing and re-numbering 40 CFR part 370. As stated in the proposed rule, § 370.28 is re-numbered as § 370.14. A table is also provided in § 370.14(a) to clarify the requirements and/or provide options to determine if reporting thresholds have been met or exceeded for mixtures containing EHSs and non-EHS hazardous chemical components. The table also shows how to report mixtures that contain EHSs and non-EHS hazardous chemical components. The basic reporting option stated in § 370.28(a) is now in the table in § 370.14(a). This provision states that the owner or operator of a facility may meet the MSDS and Tier I information reporting requirements for mixtures containing hazardous chemicals by either: (1) Reporting with respect to each component in the mixture that is a hazardous chemical; or (2) reporting with respect to the mixture itself, provided that the mixture itself is a hazardous chemical.

Section 370.28(a) also stated that, where practicable, the reporting of mixtures by a facility be consistent for both inventory and MSDS reporting. Although we proposed that the new section 370.14(d) would restate this requirement, EPA has re-numbered this provision as 370.14(b) to provide further clarity and improve the flow of the regulations.

4. Final Action on Proposed Revision (1): Removing the Phrase ''the Total Quantity of the Mixture'' From § 370.28(b)(2)

In the process of re-organizing and re-numbering all the sections in 40 CFR part 370, some of the requirements were consolidated into one section. As a result, the Agency proposed to remove the phrase ''the total quantity of the mixture'' from § 370.28(b)(2). This requirement states that if the facility chooses to report the mixture, then the total quantity of the mixture present at the facility shall be reported. Since the table in new section 370.14(a) directs the reader to §§ 370.30 and 370.40, which already provides this information, EPA believed that this phrase did not need to be repeated. EPA received five comments opposing this revision. Specifically, the commenters argued that the sections that are cross-referenced, §§ 370.30 and 370.40, do not adequately address how mixtures should be reported and thus, recommended that the phrase ''the total quantity of the mixture'' should be retained for clarity. Based on these comments, EPA has decided to retain this language in the final rule. As noted above, the language is now in the table in § 370.14(a).

5. Final Action on Proposed Revision (2): Clarifying How To Determine the Total Quantity of an EHS in Mixtures

Prior to this action, the regulation only stated that when determining whether a reporting threshold for an EHS has been met or exceeded, the owner or operator of a facility shall aggregate the quantity of the EHS present as a component in all mixtures at the facility and all other quantities of the EHS present at the facility. The Agency proposed to amend the regulations to clarify that when determining the total quantity of an EHS present at a facility, the quantity present in a mixture must be included even if the total quantity of that particular mixture is also being counted toward the threshold level for that mixture. For example, a facility has 15,000 pounds of a hazardous chemical mixture which contains 6,000 pounds of sulfuric acid, an EHS. Although the facility may report this mixture on the Tier II form as a mixture since it is above the reporting threshold of 10,000 pounds for a hazardous chemical, the facility must include the amount of the sulfuric acid in this mixture when determining the total quantity of the sulfuric acid present throughout the facility.

Since publication of the July 1990 final rule, this has been EPA's policy for determining if reporting thresholds have been met or exceeded for mixtures that contain EHSs. Thus, the Agency was simply proposing to include EPA's policy in the regulation. The Agency received seven comments supporting this revision and four comments that argued against the proposed revision. Some of the commenters who supported this revision stated that this policy is consistent with the regulatory language in § 370.28(c). These commenters also stated that EHSs should be reported this way to make sure that emergency responders do not unknowingly encounter a mixture containing an EHS component. The commenters who argued against this change stated that this method may ''double count'' the EHS and increase the reporting burden on large facilities. These commenters also argued that an EHS component of a mixture often does not exhibit the same hazardous properties as it does in its pure form, especially when present in a mixture at low concentrations.

EPA agrees with those commenters who supported the proposed revision. In particular, we believe it is important for local government officials to plan and prepare the community for emergencies involving EHSs, and it is also important to protect emergency responders. While EPA understands that this approach may increase the burden for some facilities, we believe that any extra burden is appropriate and necessary to protect emergency responders. EPA also agrees with commenters that a hazardous component may not exhibit the same hazardous properties of the pure chemical when present in a mixture at low concentrations. For this reason, EPA established a de minimis limit (1

percent for hazardous chemicals and 0.1 percent for carcinogens) below which the component in a mixture need not be counted toward the threshold quantity (October 15, 1987, 52 FR 38344).

The requirement to aggregate EHSs present throughout the facility under EPCRA sections 311 and 312 is consistent with the requirements under emergency planning in EPCRA section 302. EPA anticipates that LEPCs will request information about EHSs present at a facility in developing emergency response plans. Therefore, EPA believes that routine reporting of EHSs under sections 311 and 312 would facilitate the planning process. For these reasons, EPA is clarifying in this action that when determining the total quantity of an EHS present at a facility, the quantity present in a mixture must be included even if the total quantity of that particular mixture is also being counted toward the threshold level for that mixture. The requirement for aggregating the EHS is included in the table in § 370.14(a).

Once a facility determines that the reporting threshold has been met for an EHS, the facility has the option to report that EHS component in the mixture or the mixture itself. This option is provided in the table in § 370.14(a) as it was previously stated in § 370.28(c)(2). If the facility chooses to report on the mixture itself, the facility must indicate that this mixture contains an EHS and provide the name of that EHS.

6. Final Action on Proposed Revision (3): Adding a Provision for Determining the Quantity of a Non-EHS Hazardous Chemical Component in a Mixture

The third revision that EPA proposed was the addition of a provision to determine if the reporting threshold has been met or exceeded for mixtures that contain non-EHS hazardous chemical components. Prior to this action, the regulations only specified requirements for determining if a reporting threshold has been met or exceeded for mixtures containing EHSs and for reporting mixtures containing EHSs. However, in the preamble of the July 26, 1990 final rule, the Agency provided options for mixtures containing non-EHS hazardous chemical components. In that preamble, the Agency stated that if a facility has mixtures that contain a non-EHS hazardous chemical component, the facility may either add up the quantity of that non-EHS hazardous chemical component present throughout the facility or consider the total quantity of the mixture to determine if the reporting threshold has been met or exceeded. For example, a facility has two hazardous chemical mixtures, mixture A is 25,000 pounds and mixture B is 15,000 pounds. Mixture A contains 15,000 pounds of hazardous chemical X and 10,000 pounds of hazardous chemical Y. Mixture B contains 10,000 pounds of hazardous chemical X and 5,000 pounds of hazardous chemical Y. The facility owner or operator has the option of adding up the total quantity of each of the hazardous components in both mixtures and report each of the components on the Tier II form if the reporting threshold of 10,000 pounds has been met or exceeded. In this example, the total amount of hazardous chemical X is 25,000 pounds and the total amount of hazardous chemical Y is 15,000 pounds, thus both would need to be reported. The facility owner or operator also has the option to report the mixtures on the Tier II form since both mixtures exceed the reporting threshold of 10,000 pounds. In the June 1998 proposed rule, the Agency proposed to codify these options.

In addition to providing these options, the Agency also proposed a requirement for facilities that choose to report the non-EHS hazardous chemical components of mixtures instead of reporting on the mixture itself. The proposed rule stated that when determining if a reporting threshold has been met or exceeded, these facilities must include the quantity of a non-EHS hazardous chemical component present in a mixture even if that particular mixture is also being counted toward the threshold level for that mixture. In looking at the example above, in addition to the two mixtures present at the facility, assume that the facility has mixture C that contains 10,000 pounds of chemical X and 5,000 pounds of chemical Z. The facility decides to report this mixture on the Tier II form rather than breaking it up into its hazardous chemical components. The Agency proposed that if the facility chooses to break up the components in mixtures A and B, then the facility must also add the quantity of chemical X in mixture C to the quantities of chemical X in mixtures A and B, even though the facility has decided to report mixture C on the Tier II form.

EPA received comments from industry and State and local government agencies regarding this approach. They generally agreed that options for determining if reporting thresholds have been met or exceeded for mixtures containing non-EHS hazardous chemicals should be provided. These commenters also stated that flexibility is important for those operating sites that may only have MSDSs for mixtures. For these sites, reporting on the total quantity of the mixture is preferable. One commenter suggested that reporting individual non-EHS hazardous chemical components should be required only if the facility has an MSDS for that specific component.

The Agency agrees with the commenters that the options proposed for determining if reporting thresholds have been met or exceeded for non-EHS hazardous chemicals present in mixtures are consistent with EPCRA sections 311(a)(3) and 312(a)(3). The statute provides the facility owner or operator with the option to either report the mixture itself or each hazardous chemical component in the mixture. As stated by one of the commenters, and EPA agrees, flexibility is important to those sites that may only have MSDSs for mixtures. In that case, it is preferable for a facility to submit an MSDS for the mixture under section 311 and report the mixture on the inventory form under section 312. Therefore, the Agency is finalizing as proposed by providing options for determining if a reporting threshold has been met or exceeded for mixtures that contain non-EHS hazardous chemicals. The facility has the option to either add up all the amounts of each non-EHS hazardous chemical component present throughout the facility or consider the total quantity of the mixture to determine whether the total quantity equals or exceeds the reporting threshold. These options were proposed to be added to the table in 370.14(b) that is re-numbered as 370.14(a) in this final action.

Once it is determined that the reporting threshold is met or exceeded for either the non-EHS hazardous chemical component or the mixture, the facility may report the quantity of non-EHS hazardous chemical component or the mixture itself. The table in § 370.14(a) states these options.

EPA also understands the concern raised by some commenters that every facility is different. That is, in some cases, the OSHA regulations may require a facility to prepare or have available an MSDS for the mixture and/or its hazardous chemical components. This is the reason that the Agency proposed to add a provision in § 370.28(a)(2) with respect to consistency in MSDS (section 311) and inventory reporting (section 312). This means that if the facility owner or operator decides to report a mixture under section 311 by submitting an MSDS for the mixture, then the facility owner or operator should also report that mixture under section 312 and not report its hazardous chemical components, unless the facility can show that it is not practicable to do so. As stated in the preamble to the

proposed rule, it is important for the MSDS information to correspond with the inventory information to ensure consistency in the qualitative and quantitative information received regarding the hazards of chemicals stored on site. The requirement for consistency in reporting, which was in § 370.28(a)(2), is now in § 370.14(b).

7. Final Action on Proposed Revision (4): Adding a Provision for Determining the Quantity of a Non-EHS Hazardous Chemical When Present in Pure Form and in Mixtures

The fourth revision that EPA proposed was to specify requirements for the owner or operator to determine if reporting thresholds have been met or exceeded when a non-EHS hazardous chemical is present both by itself and as a component in mixture(s). While EPA intended to address non-EHS hazardous chemicals with this revision, the term ''non-EHS'' was inadvertently left out of the regulatory language in § 370.14(e). However, the preamble language included the term ''non-EHS'' within the discussion of this proposed revision. The proposed regulatory language indicated that if a hazardous chemical (should have stated non-EHS hazardous chemical) is present at a facility both by itself and as a component in mixture(s), the facility must determine the total amount of that chemical and compare it to the reporting threshold. To determine this quantity, the facility would have to add together all quantities of the non-EHS hazardous chemical present at the facility, including the quantity present in concentrations greater than 1% in all mixtures. For example, a facility has a non-EHS hazardous chemical in pure form and in mixtures throughout the facility. This proposed requirement states that the facility owner or operator must add the quantity of that non-EHS hazardous chemical in pure form to those quantities of that non-EHS hazardous chemical in mixtures to determine if the reporting threshold of 10,000 pounds is met or exceeded. The purpose of this proposed revision was to establish a clear method for accurately calculating the quantity of non-EHS chemicals present.

Four commenters supported this proposed revision and nine commenters opposed it. The commenters that supported it stated that this method would more accurately account for the total amount of a non-EHS hazardous chemical in both its pure form and in mixtures present at a facility. Most of the commenters who opposed this revision stated that requiring facilities to aggregate the amounts of non-EHSs on site in mixtures with non-EHS hazardous chemicals present in pure form will impose a great burden on facilities, as well as State and local government agencies that manage the submitted reports. The commenters also argued that requiring aggregation of non-EHSs is unnecessary as information on these chemicals is not required for emergency planning purposes. Commenters also stated that the aggregation will not provide meaningful hazard information to emergency responders. Most of the commenters agreed with the Agency that aggregating and reporting EHSs present throughout the facility is vital to emergency planning and is important to emergency responders. However, these same commenters opposed aggregating non-EHS hazardous chemicals present throughout the facility.

After reviewing and considering all the comments received, the Agency has decided not to adopt this proposed revision. EPA agrees with those commenters that stated that this approach imposes a burden on most facilities and does not improve local emergency planning efforts, as EPCRA sections 302 and 303 do not require the incorporation of non-EHSs into the comprehensive emergency response plan. As mentioned earlier in this section, EPA has determined that data on EHSs have greater emergency planning and right-to-know value to communities than do data on non-EHSs. Thus, as mentioned above, EPA is not requiring facilities to aggregate non-EHS hazardous chemical components in mixtures and in pure form to determine if the threshold level is met.

B. Tier I and Tier II Inventory Forms and Instructions

1. Removal of Forms and Instructions From the Code of Federal Regulations

The Agency proposed to remove the Tier I and Tier II inventory forms and instructions from the Code of Federal Regulations (CFR). In the preamble to the proposed rule, the Agency stated that removing the forms (and instructions) from the CFR would make it easier for the Agency to make minor changes to them. Under the Paperwork Reduction Act (PRA), the Agency must submit any forms used to collect information from the regulated community to the Office of Management and Budget (OMB) for review and approval. The Agency must develop a supporting statement explaining the reasons, the method, and the burden hours and costs imposed on the regulated community for the collection of the information. Once approved, these forms receive an OMB control number and expiration date, usually three years from approval. To continue using these forms, the Agency must submit them along with the supporting statement to be reviewed and renewed by OMB by the expiration date. Therefore, if the forms remain in the CFR, the Agency would need to reprint them every three years just to reflect the new OMB information collection date, even if no other changes were made to the form.

Sixteen commenters, mainly consisting of State and local government agencies, supported the removal of the forms and instructions from the CFR. Commenters from industry also supported removal of the forms from the CFR and making them available on EPA's Web site. Five commenters, however, opposed the removal of the forms and the instructions from the CFR.

Commenters who supported the change did so because they believe that once the forms and instructions are removed, EPA can make minor changes to them with minimal expense. Some commenters stated that most States have developed their own forms with additional specific requirements; therefore, States would make their forms available to the regulated community. Other supporters also suggested that any major changes to the forms should still be made in a rulemaking process and not just through the public comment period during the renewal and approval process for the information collection requirements under the Paperwork Reduction Act (PRA). Commenters that opposed the removal of the forms and instructions from the CFR were concerned that EPA would change them without going through a public notice and comment (e.g. via rulemaking) process. Some of the commenters also suggested that the Agency should require the use of only the Federal Tier I and Tier II forms, instead of allowing separate forms for each State, since the Federal forms promote uniformity of reporting.

In response to these comments and as described in the proposal, EPA has decided to remove the forms and instructions from the CFR, as proposed. However, revised §§ 370.41 and 370.42 will contain a narrative description of the Tier I and Tier II informational requirements. The Tier I and Tier II forms and instructions will be available on the Agency's Web site at *http://www.epa.gov/emergencies*. If the Agency makes significant changes to the forms in the future, we would go through the rulemaking process and solicit public comment before such changes were made to the form.

We would also note that while EPA agrees with the commenters that reporting should generally be uniform, EPA also believes that each State should have the flexibility to collect the hazardous chemical inventory information it needs to develop emergency plans for its communities. States can implement EPCRA according to their needs and may promulgate requirements that are more stringent than the Federal requirements. States also can add more chemicals, set lower reporting thresholds and require facilities to report using a State form, including the electronic submission of information. At present, most States have their own reporting formats or have requirements that are more stringent than the Federal Regulations. Thus, facilities are encouraged to contact their States to determine whether any additional requirements or formats are required by their States.

2. Revisions to the Forms and Instructions

In addition to proposing to remove the forms and instructions from the CFR, EPA also proposed several changes to the forms and one change to the instructions. However, before discussing these, and as way of background, EPA stated in the preamble to the proposed rule that the Agency was undertaking an agency-wide initiative to streamline and consolidate the Agency's collection and maintenance of environmental data, which was intended to improve EPA's management and use of such information, as well as to provide improved public access to such information by creating links between major data sources. This initiative, the Facility Identification Initiative, would establish a unique Facility Identification Number for facilities that submit environmental data to EPA under various regulatory programs. EPA would then be able to establish links among records of environmental data relative to a specific facility and also establish means for the public to access the Agency's data using this number.

Thus, EPA proposed and sought public comment on whether to require facilities to report their Facility Identification Number on their Tier I (or Tier II) form, when reporting under EPCRA section 312, if such a number has been assigned under another State or Federal environmental program. EPA received a total of thirty-five comments on this issue. Twenty-five commenters supported and ten commenters opposed this revision. Commenters that supported this change stated that the inclusion of the Facility Identification Number will facilitate information sharing between localities and EPA. These commenters also stated that it would be helpful to integrate environmental reporting across program areas. However, those commenters that did not support the change argued that many of the facilities that comply with the Tier II reporting requirement would not have a number because they may not have to comply with other environmental programs. Other commenters suggested that this data element should be optional.

Based on our evaluation of the comments, we have decided not to require the Facility Identification Number be reported on these forms. The Agency agrees with the commenters that some facilities may not have a number assigned to them. Also, EPA is aware that many States assign a number to their facilities, which is also labeled as ''Facility Identification Number.'' EPA believes that facilities could become confused with two numbers assigned by EPA and the State. Therefore, this data element will not be included on the Tier I and Tier II forms at this time.

The second change that was proposed to the Tier I and Tier II forms was to require facilities to report the North American Industry Classification System (NAICS) code for their facility on their forms instead of the Standard Industrial Classification (SIC) code. The SIC codes were replaced by the NAICS codes in 1997. When the proposed rule was published in June 1998, facilities were just becoming familiar with the new codes and the Agency received many adverse comments on this proposed change. Commenters stated that it was premature to require this change since the industry is not very familiar with the new codes. However, other commenters supported the change to the NAICS code, but suggested that the Agency should allow facilities to report both codes until the codes are universally accepted.

Since the rule was first proposed in 1998, the Agency believes that facilities should now be familiar with the NAICS codes since they may have been using them to comply with other EPA programs. Therefore, as proposed, EPA is requiring that facilities use the NAICS code for their facility on their Tier I and Tier II forms. The Agency will revise these forms to reflect this change.

Finally, as mentioned in the preamble to the proposed rule, EPA is revising the informational requirements to the Tier II form in § 370.42 to require facilities to report ''chemical name or the common name of the chemical as provided on the *Material Safety Data Sheet*.'' Commenters indicated general support for this revision. Therefore, in this final action, the Tier II Informational Requirements in § 370.42 codifies this statutory requirement.

C. Penalties for Noncompliance

The penalties for noncompliance with the emergency release notification and hazardous chemical reporting requirements were stated in §§ 355.50 and 370.5, respectively. The Tier I and Tier II form instructions contained in §§ 370.40 and 370.41 also included a description of potential penalties for noncompliance with the hazardous chemical reporting requirements. In order to streamline the regulations, EPA proposed removing these provisions from the CFR, since the penalties are already established in the statute. Commenters supported this change. Thus, the final rule will not contain this language.

It should also be noted that EPA believes it is appropriate to remove the penalty information from this regulation because penalties are periodically adjusted and published in the **Federal Register** in a separate action. Under the Debt Collection Improvement Act (DCIA) of 1996, EPA makes adjustments to the Civil Monetary Penalties at least once every four years to account for inflation. Therefore any penalty information printed in an EPA regulation would become obsolete once the next four year cycle begins. The Agency would need to update every rule that contains penalty information; instead, it publishes current penalty information for all regulations in the Civil Penalty Inflation Adjustment Rule. The most recent publication of the Civil Penalty Inflation Adjustment Rule was published in the **Federal Register** on February 13, 2004 (69 FR 7126).

D. Additional Changes to 40 CFR Parts 355 and 370 Regulations

EPA proposed some minor changes to the regulations in 40 CFR parts 355 and 370 to make the rules clearer and easier to use. Some of the proposed changes included codifying policy statements that EPA has provided to the regulated community, clarifying some requirements, and restating the statutory requirements. Commenters generally supported these changes and thus, the regulations have been amended to reflect these changes. As it was stated earlier in this action, EPA has re-numbered the sections in both 40 CFR parts 355 and 370. Thus, the discussion below reflects the re-numbered sections where the changes can be found.

- SERC and LEPC—The Agency proposed replacing the phrase ''State Emergency Response Commission'' with SERC and the phrase ''Local Emergency

Planning Committee'' with LEPC in 40 CFR parts 355 and 370, since these terms are now commonly used by the regulated community and the public. Commenters supported this change and EPA is adopting it in this final action. These terms are added to the definition sections in 40 CFR parts 355 and 370. The definitions of these terms can be found in §§ 355.61 and 370.66.

• Quantity of an extremely hazardous substance in a mixture—The instructions for calculating the quantity of an EHS present in a mixture for emergency planning in § 355.30(e)(1), are now in § 355.13. The terms ''mixture'' and ''solution'' are both used in these instructions. EPA proposed to remove the term ''solution'' since the definition of the term ''mixture'' includes ''solution.'' Most commenters supported this change. EPA has also replaced the term ''mass'' with the term ''weight,'' which is more familiar to the public. For purposes of these regulations, these two terms are synonymous. EPA also received comments supporting this revision. Both of these proposed changes are finalized in today's action. In addition, section 355.13 now includes an example calculation to improve understanding of these instructions.

• Extremely Hazardous Substances in solid form—The instructions to determine which threshold planning quantity (TPQ) to use for an EHS in solid form in § 355.30(e)(2)(i) are now in § 355.15. EPA proposed to replace the phrases ''exists in'' and ''is handled in'' with ''is in'' in these instructions, since this phrase is simpler and easier to understand. EPA received comments supporting this change and is finalizing it in today's action.

• Facility Emergency Coordinator—The regulations for emergency planning first promulgated on April 22, 1987 (52 FR 13395) set forth requirements in § 355.30(c) that require the owner or operator of a facility to notify the LEPC (or the Governor if there is no LEPC) of the name of the facility emergency coordinator or the facility representative. In the 1998 proposed rule, EPA proposed that the SERC be notified if there is no LEPC, or the Governor if there is no SERC. The Agency proposed this change because most States now have functioning SERCs than when the regulations were first promulgated in April 1987. EPA received comments supporting this revision. In re-organizing and re-numbering part 355, this requirement is now finalized in § 355.20.

The regulations in § 355.30(c) also require that the name of the facility emergency coordinator be provided on or before September 17, 1987 or 30 days after an LEPC is established, whichever is earlier. This notification deadline corresponds to the statutory deadline found in EPCRA section 303(d)(1). Neither the statute nor the current regulations establish a deadline for providing this information if a facility becomes subject to the emergency planning requirements (that is, an EHS first becomes present at the facility in excess of its TPQ, or the EHS list is revised and an EHS on the revised list is present at the facility in excess of its TPQ), after September 17, 1987 or if a new LEPC is established. EPCRA section 302(c) does, however, require that, within 60 days after becoming subject to the emergency planning requirements, a facility must provide notice that it is subject to these requirements. EPA believes that the name of the facility emergency coordinator is an integral part of the emergency planning notification requirements, and should therefore be provided at the same time as the emergency planning notice. Accordingly, the Agency proposed this change and new § 355.20 now requires that the name of the facility emergency coordinator be provided by September 17, 1987, or within 30 days of the establishment of an LEPC (in accordance with the statutory deadline at EPCRA section 303 (d) (1)), or within 60 days after a facility becomes subject to EPCRA's emergency planning requirements (consistent with EPCRA section 302(c)). In today's action, the deadline for notification of the name of the facility emergency coordinator is now consistent with the deadline for a facility to provide notice that it is subject to the emergency planning requirements (see revised § 355.20). Section 355.20 presents a summary in table format of the information that is required under EPCRA's emergency planning requirements, including the types of information reported, required recipients of the information, and deadlines for reporting. All commenters supported this revision.

• Emergency Planning Notification.

Section 355.30 requires that a facility notify the SERC that it is subject to the emergency planning requirements under EPCRA section 302. EPA proposed that the LEPC also be notified. This would be consistent with section 302(c) of EPCRA, which requires that an owner or operator notify the SERC and LEPC when his facility becomes subject to the emergency planning requirements. This revised notification requirement is now in § 355.20.

In order for the regulations to be consistent with the statutory requirements in EPCRA section 303(d)(1), the Agency proposed to add ''within 30 days after establishment of an LEPC'' in § 355.20. Prior to the revisions finalized in this rulemaking, § 355.30(b) only stated that the notification be provided on or before May 17, 1987 or within 60 days after a facility first becomes subject to the requirements. Commenters supported these revisions, although we decided to re-phrase it as ''within 30 days after an LEPC is established.'' The table in § 355.20 now includes this phrase for emergency planning notification and facility emergency coordinator.

In the process of rewriting the regulations in plain language format, EPA realized that the dates, May 17, 1987 and September 17, 1987 in § 355.30 for emergency planning notification and facility emergency coordinator are no longer applicable. Therefore, EPA decided to remove those dates from the revised regulations in § 355.20.

• Changes relevant to emergency planning.

Prior to the revisions finalized in this rulemaking, § 355.30(d) stated that facility owners or operators were required to inform the LEPC of any changes occurring at the facility which may be relevant to emergency planning. In re-designating all the sections in this part, EPA proposed that this requirement be in § 355.20 and to include the term ''promptly'' in order to be consistent with EPCRA section 303(d)(2). Commenters supported this revision, but suggested that the Agency provide a specific time period, such as 10, 20 or 30 days, rather than using a vague term. EPA agrees with the commenters, but also notes that the changes that may occur at a facility could be important for developing and maintaining emergency plans. Therefore, EPA is requiring that information about changes at a facility relevant to emergency planning must be submitted within 30 days of such changes. Changes relevant to emergency planning may include, but not be limited to, notifying that facility is no longer in operation, new EHSs are present at the facility, EHSs are moved to a different location at the facility, EHSs are no longer present at the facility, etc.

• Format for emergency planning and release notifications.

Since the promulgation of the final rule on April 22, 1987 (52 FR 13379), EPA's policy has been that emergency planning notification under EPCRA section 302 should be provided in writing. However, the regulations do not specify how emergency planning notification shall be provided. In this

action, EPA has added a new section 355.21, to codify our existing policy to recommend that facilities provide emergency planning notification in writing.

EPA also proposed to add section 355.41 to the emergency release notification under the EPCRA section 304 requirements which clarifies that the initial notification should be oral and the follow-up notification should be in writing. EPA does not specify a particular format, but does note that an LEPC may request a specific format for submission of this information. Commenters supported both of these revisions.

• 24-hour time period for release notification.

The emergency release notification requirements in § 355.40 do not indicate the time period in which a release of a reportable quantity must occur to trigger emergency release notification requirements. Under EPCRA section 304(a), releases are reportable if they occur in a manner that requires, or would require, notification under CERCLA section 103(a). EPA's interpretation has been that the 24-hour time period under CERCLA also applies to EPCRA. This time period was proposed and is now added to the regulations in § 355.33, which states that the ''release of a reportable quantity * * * within any 24-hour period'' triggers the emergency release notification requirements. Commenters supported this revision.

• Releases during transportation.

The emergency release notification requirements that apply to the release of a substance during transportation (or storage incident to transportation) in § 355.40(b)(4)(ii) are now in § 355.42(b). EPA proposed to remove the term ''transportation-related release'' and its definition from this section since this term may add confusion to the requirements. EPA also proposed to revise this requirement to be consistent with the language in the statute in section 304(b)(1). The statute states: ''* * * with respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice * * * calling the operator.'' EPA believes that the requirement is easier to understand if the term ''transportation-related release'' is removed from the regulations and replaced with the words ''release during transportation and storage incident to transportation.'' Commenters supported this revision.

• Releases that are continuous.

Under the definitions in 40 CFR 302.8(b), a release that is continuous and stable in quantity and rate qualifies for reduced reporting requirements under EPCRA. The requirements for reporting continuous releases in § 355.40(a)(2)(iii) are now in § 355.32. Continuous releases are subject to four notification requirements. As stated in the proposed rule, these notification requirements have been reorganized in today's action in order to clarify that the community emergency coordinator of the LEPC and the SERC of any State that is likely to be affected by the release must be notified in each of the four release notifications (in addition to the notifications required under 40 CFR 302.8). Commenters supported this revision.

• State or local format for reporting inventory information.

One of the main goals of the June 1998 proposed rule was to provide flexibility for SERCs and LEPCs with respect to the manner in which information is reported under EPCRA sections 311 and 312. Sections 370.40 and 370.41 proposed flexibility in that State or local forms could be used for reporting inventory information, as long as the content is identical to the uniform Federal forms (Tier I or Tier II forms). EPA is revising these provisions so that the use of a State or local format is allowed, as proposed. The provisions allow the submittal of inventory information in a variety of ways, including electronic, as long as all the information required under the statute and its implementing regulations is provided. These revisions are set forth in § 370.40. Commenters supported this revision.

EPA also proposed that, when using State or local formats for reporting inventory information, the use of State or local codes for weight ranges are allowed, provided that the weight ranges are no broader than those provided in § 370.43. EPA also proposed that State or local codes for storage types and conditions can be used provided that the codes specify the same or more detailed information as that specified in § 370.43. As proposed, the Agency has added paragraph (d) to § 370.43, allowing this flexibility. Commenters supported this revision.

• SERC or LEPC response to a request for Tier II information within 45 days.

In order to be consistent with the language in EPCRA section 312(e)(3)(D), EPA proposed to add, ''A SERC or LEPC must respond to a request for Tier II information * * * within 45 days of receiving such a request.'' Section 370.61(b) in today's action adds this new requirement. Commenters supported this revision.

E. Definitions

EPA proposed to combine all definitions found in both 40 CFR parts 355 and 370 into one section at the end of 40 CFR part 355 in order to improve the readability of the rule. By placing the consolidated definitions section at the end of 40 CFR part 355, the reader would not have to read through all of the definitions before seeing how they are used in the text. EPA sought comments on whether these changes improve the readability of the rule. Many of the commenters suggested that both 40 CFR parts 355 and 370 should have a definition section. Therefore, EPA will include a definition section at the end of each part in § 355.61 and § 370.66 under the heading ''*How are key words in this part defined?*''

EPA also proposed some minor revisions to some of the terms found in the definition section for 40 CFR parts 355 and 370. The Agency is finalizing all of the changes, as proposed.

• *Act.* The term ''Act,'' used to define ''the Superfund Amendments and Reauthorization Act of 1986'' in 40 CFR part 355, has been removed from the definition section. Each of the laws, the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) are used in today's action by name of the Act. Therefore, EPA decided to remove the term ''Act.'' Commenters supported this revision.

• *SERC or LEPC.* The terms ''commission'' and ''committee'' have been replaced with ''SERC'' and ''LEPC.'' Commenters supported this revision.

• *EPCRA and OSHA.* The definitions of these acronyms are added to the definition sections as proposed. Commenters supported this revision.

• *Facility.* The final rule, published on July 26, 1990 (55 FR 30634), revised the definition of facility for both 40 CFR parts 355 and 370 to clarify that the definition includes subsurface structures that are man-made or natural structures into which hazardous chemicals are purposefully placed or removed through human means, such that the structures function as a containment structure. The purpose of this revision was to clarify that the term ''structures'' in the definition of ''facility'' is not limited to surface structures, but also includes subsurface structures. However, the Agency inadvertently omitted the phrase ''all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for

human use'' in 40 CFR part 355. EPA intended both 40 CFR parts 355 and 370 to have the same definition. This discrepancy is being corrected in this final rule.

EPA received a total of five comments; two commenters supported this change and one provided a comment that was outside the scope of the proposed rule. Two other commenters requested that EPA re-confirm the policy that the Agency issued in a letter dated October 25, 1990, to the American Petroleum Institute (API).

In that letter, EPA clarified that oil and gas deposits with indefinite boundaries are not structures within the definition of facility and therefore not considered part of the ''facility.'' However, natural structures that function as containment structures, such as a cave or a salt dome which have more definite boundaries are considered structures within the definition of ''facility.'' EPA concluded that, for emergency planning, emergency release notification, and hazardous chemical reporting, the definition of ''facility'' does not include oil or gas deposits and thus, is re-confirming this policy today.

• *Hazardous Substances.* The terms ''CERCLA hazardous substances'' and ''extremely hazardous substances'' were proposed to be placed together in the definition section under the term ''hazardous substances'' in order to eliminate the confusion between them. EPA received two comments that supported this minor change. However, one commenter suggested that ''CERCLA hazardous substances'' and ''extremely hazardous substances'' should be separate items in the definition in order to make it easier to locate these terms. EPA decided to keep both terms as separate entries in the definition section of 40 CFR part 355.

• *Hazardous Chemical.* Two organizational changes were proposed to improve the clarity of this definition. The first was to re-format the list of the exceptions to the term. The second was to move the phrase ''present in the same form and concentration as a product packaged for distribution and use by the general public'' to the exceptions to the definition of the term ''hazardous chemical.'' Prior to the revisions in this rulemaking, this phrase was defined separately in the definition section. The Agency believes that including this phrase in the list of exceptions to the term ''hazardous chemical'' will assist the reader to better understand its meaning. EPA received one comment that supported this revision. One commenter, however, argued that this exemption should not be allowed since many products sold to the general public are extremely dangerous. While EPA agrees that some products sold to the general public may pose a danger, the statute provides exemptions from the term ''hazardous chemical'' and EPA is only restating the statutory exemption in the definition section. Thus, this change is being finalized today.

• *Inventory form.* The Tier I and Tier II forms have been removed from the regulations in 40 CFR part 370 as discussed previously in the preamble. However, this term is kept in the definition section in 40 CFR part 370 and is revised to indicate that the information requirements for these forms can be found in §§ 370.40 through 370.45. EPA received two comments that supported this revision.

• *Medium or media.* This term is added to the definition section in 40 CFR part 355.

• *Mixture.* The term ''mixture'' is used in both 40 CFR parts 355 and 370. However, the definition of this term only appeared in 40 CFR part 355. Thus, EPA is including this term in the definition section of both §§ 355.61 and 370.66. EPA also is clarifying that the definition of ''mixture'' in 40 CFR part 370 is the same as used in 29 CFR 1910.1200(c), since the applicability of 40 CFR part 370 is based on OSHA's hazard communication standard (29 CFR 1910.1200). EPA received one comment that supported this revision. In addition, the prior definition to the term ''mixture'' included ''compounds.'' In a compound, the various constituents do not retain their individual identities, so a ''compound'' should not be treated as a mixture. Therefore, as stated in the preamble to the proposed rule, EPA has decided to remove the term ''compound'' from the definition of mixture.

• *Reportable Quantity.* Prior to the revisions in this rulemaking, the definition of the term ''reportable quantity'' stated that ''for any CERCLA hazardous substance, its reportable quantity is established in Table 302.4 of 40 CFR part 302, for such substance. For any other substance, the reportable quantity is one pound.'' EPA proposed and is revising this definition to add the phrase ''for any extremely hazardous substance, its reportable quantity means the reportable quantity established in appendices A and B of this part.'' EPA also proposed and is adding the phrase, ''unless and until superseded by regulations establishing a reportable quantity for newly listed EHSs or CERCLA hazardous substances, a weight of 1 pound shall be the reportable quantity.'' Commenters supported this revision.

• *Threshold Planning Quantity.* The term ''threshold planning quantity'' only appeared in the definition section in 40 CFR part 355. Since this term is also used in 40 CFR part 370, this term will also be included in the definition section in 40 CFR part 370. EPA received one comment that supported this revision.

• *Tribe.* As proposed, the term ''Tribe'' is placed with the definition of Indian Tribe. These terms will appear in the definition section in both 40 CFR parts 355 and 370. EPA received one comment that supported this revision.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. In addition, this final action is re-written in a plain language format, including adding tables and examples, to assist the regulated community better understand the requirements.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community better understand the requirements.

However, OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR parts 355 and 370 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2050–0092 and 2050–0072, EPA ICR numbers 1395.06 and 1352.10, respectively.

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 Procedures 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.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

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. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives, ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also re-writes the regulations in a plain language format to assist the regulated community to better understand the requirements. We have therefore concluded that today's final action will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, sections 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community better understand the requirements. Most of the revisions included in this final action, including the plain language rewrite, are intended to help the States, Tribal governments and local government agencies better explain the requirements and implement the program under EPCRA. Thus, this rule does not impose any requirements on State, local or tribal governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local government officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This 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 final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community to better understand the requirements. Most of the revisions included in this final action, including the plain language rewrite, are intended to help the States, Tribal governments and local agencies. These entities will be able to better explain the requirements and implement the program under EPCRA. This rule does not impose any requirements on State, local or tribal governments. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to

ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community to better understand the requirements. Most of the revisions included in this final action, including the plain language rewrite are intended to help Tribal governments, so these entities can better explain the requirements and implement the program under EPCRA. This rule does not impose any requirements on State, local or tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community better understand the requirements.

H. Executive Order 13211 (Energy Effects)

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community better understand the requirements.

Under Executive Order 12866, this action is a ''significant regulatory action''. Accordingly, EPA submitted this action to the Office of Management Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or would otherwise be 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. The NTTAA directs EPA to provide Congress, through OMB, explanations of when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve 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 does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community in better understanding the requirements. In addition, this final action does not affect public access to any of the information provided under the Emergency Planning Notification, Emergency Release Notification and Hazardous Chemical Reporting regulations.

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 the 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).

List of Subjects in 40 CFR Parts 355 and 370

Environmental protection, Chemicals, Hazardous substances, Penalties, Reporting and recordkeeping requirements, Superfund.

Dated: October 17, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

■ 1. Part 355 is revised to read as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

Subpart A—General Information

Sec.

355.1 What is the purpose of this part?
355.2 Who do ''you,'' ''I,'' and ''your'' refer to in this part?
355.3 Which section contains the definitions of the keywords used in this part?

Subpart B—Emergency Planning

Who Must Comply

355.10 Must my facility comply with the emergency planning requirements of this subpart?
355.11 To what substances do the emergency planning requirements of this subpart apply?
355.12 What quantities of extremely hazardous substances trigger emergency planning requirements?
355.13 How do I calculate the quantity of an extremely hazardous substance present in mixtures?
355.14 Do I have to aggregate extremely hazardous substances to determine the total quantity present?

355.15 Which threshold planning quantity do I use for an extremely hazardous substance present at my facility in solid form?
355.16 How do I determine the quantity of extremely hazardous substances present for certain forms of solids?

How To Comply

355.20 If this subpart applies to my facility, what information must I provide, who must I submit it to, and when is it due?
355.21 In what format should the information be submitted?

Subpart C—Emergency Release Notification

Who Must Comply

355.30 What facilities must comply with the emergency release notification requirements of this subpart?
355.31 What types of releases are exempt from the emergency release notification requirements of this subpart?
355.32 Which emergency release notification requirements apply to continuous releases?
355.33 What release quantities of EHSs and CERCLA hazardous substances trigger the emergency release notification requirements of this subpart?

How To Comply

355.40 What information must I provide?
355.41 In what format should the information be submitted?
355.42 To whom must I submit the information?
355.43 When must I submit the information?

Subpart D—Additional Provisions

355.60 What is the relationship between the emergency release notification requirements of this part and the release notification requirements of CERCLA?
355.61 How are keywords in this part defined?

Appendix A to Part 355—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities (Alphabetical Order)

Appendix B to Part 355—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities (CAS Number Order)

Authority: Sections 302, 303, 304, 325, 327, 328, and 329 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11002, 11003, 11004, 11045, 11047, 11048, and 11049).

Subpart A—General Information

§ 355.1 What is the purpose of this part?

(a) This part (40 CFR part 355) establishes requirements for a facility to provide information necessary for developing and implementing State and local chemical emergency response plans, and requirements for emergency notification of chemical releases. This part also lists Extremely Hazardous Substances (EHSs) and Threshold Planning Quantities (TPQs) in Appendices A and B, which are used in determining if you are subject to these requirements.

(b) This part is written in a special format to make it easier to understand the regulatory requirements. Like other Environmental Protection Agency (EPA) regulations, this part establishes enforceable legal requirements. Information considered non-binding guidance under EPCRA is indicated in this regulation by the word ''note'' and a smaller typeface. Such notes are provided for information purposes only and are not considered legally binding under this part.

§ 355.2 Who do ''you,'' ''I,'' and ''your'' refer to in this part?

Throughout this part, ''you,'' ''I,'' and ''your'' refer to the owner or operator of a facility.

§ 355.3 Which section contains the definitions of the key words used in this part?

The definitions of key words used in this part are in § 355.61. It is important to read the definitions for these key words because the definition explains the word's specific meaning associated with the regulations in this part.

Subpart B—Emergency Planning

Who Must Comply

§ 355.10 Must my facility comply with the emergency planning requirements of this subpart?

You must comply with the emergency planning requirements in this subpart if your facility meets either of the following two conditions:

(a) Any extremely hazardous substance (EHS) is present at your facility in an amount equal to or greater than its threshold planning quantity (TPQ), or

(b) Your facility has been designated for emergency planning purposes, after public notice and opportunity for comment, by one of the following three entities:

(1) The State Emergency Response Commission (SERC).

(2) The Governor of the State in which your facility is located.

(3) The Chief Executive Officer of the Tribe for the Indian Tribe under whose jurisdiction your facility is located.

§ 355.11 To what substances do the emergency planning requirements of this subpart apply?

The emergency planning requirements of this subpart apply to any EHS listed in Appendices A and B of this part. Additionally, if a facility is designated for emergency planning purposes, as provided in § 355.10(b), substances that are not EHSs at this facility may become subject to the emergency planning requirements.

§ 355.12 What quantities of extremely hazardous substances trigger emergency planning requirements?

Any EHS present at your facility in an amount equal to or greater than its TPQ triggers the emergency planning requirements of this subpart. The TPQs are listed in Appendices A and B of this part in the column labeled ''threshold planning quantity.''

§ 355.13 How do I calculate the quantity of an extremely hazardous substance present in mixtures?

If an EHS is present in a mixture in a particular container, determine the quantity (in pounds) of the EHS in that container by multiplying the concentration of the EHS (in weight percent) by the weight (in pounds) of the mixture in the container. If the concentration of an EHS is less than or equal to one percent in the mixture, you do not have to count that EHS. Here is an example calculation:

Example: You have 150 pounds of a mixture that contains 20 weight percent of a certain EHS. The quantity of EHS present in the mixture is:

EHS (in pounds)
= (weight percent of EHS) × (weight of mixture)
= (20 percent) × (150 pound mixture)
= (0.20) × (150)
EHS (in pounds)
= 30 pounds

§ 355.14 Do I have to aggregate extremely hazardous substances to determine the total quantity present?

You must aggregate (i.e., add together) the amounts of each EHS at your facility to determine if a TPQ is present. This means that, for a particular EHS, you must determine the total amount present at any one time at your facility by adding together the quantity of pure EHS and the quantity contained in all mixtures, regardless of location, number of containers, or method of storage. You do not have to count an EHS in a mixture if the concentration of that EHS is less than or equal to one percent.

§ 355.15 Which threshold planning quantity do I use for an extremely hazardous substance present at my facility in solid form?

EHSs that are in solid form are subject to one of two different TPQs (for example, TPQs may be listed as 500/10,000 pounds), both of which are listed in Appendices A and B of this part. Here is how to determine which of the two listed TPQs you must use for an

EHS present at your facility in solid form:

(a) Use the lower TPQ from Appendices A and B of this part if the solid:

(1) Is in powdered form and has a particle size less than 100 microns;

(2) Is in solution;

(3) Is in molten form; or

(4) Meets the criteria for a National Fire Protection Association (NFPA) rating of 2, 3 or 4 for reactivity.

Note to paragraph (a): Use the instructions in § 355.16 to calculate the quantity present for the categories of solids listed in paragraphs (a)(1), (2) and (3) of this section.

(b) If the solid does not meet one of the criteria in paragraph (a) of this section, then the TPQ is 10,000 pounds.

§ 355.16 How do I determine the quantity of extremely hazardous substances present for certain forms of solids?

For the three forms of solids that are listed in § 355.15(a)(1) through (3), use these instructions to determine the quantity of extremely hazardous substance present:

(a) *Solid in powdered form with a particle size less than 100 microns.* Multiply the weight percent of solid with a particle size less than 100 microns in a particular container by the total weight of solid in the container.

(b) *Solid in solution.* Multiply the weight percent of solid in solution in a particular container by the total weight of solution in the container.

(c) *Solid in molten form.* Multiply the weight of solid in molten form by 0.3.

How to Comply

§ 355.20 If this subpart applies to my facility, what information must I provide, who must I submit it to, and when is it due?

Use this table to determine the information you must provide, who to provide it to, and when:

What types of emergency planning notification are required?	What information must I provide?	To whom must I provide the information?	When must I provide the information?
(a) Emergency planning notification.	You must provide notice that your facility is subject to the emergency planning requirements of this subpart.	To the SERC and the LEPC	Within 60 days after your facility first becomes subject to the requirements of this subpart. If no LEPC exists for your facility at the time you are required to provide emergency planning notification, then you should report to the LEPC within 30 days after an LEPC is established for the emergency planning district in which your facility is located.
(b) Facility emergency coordinator	You must designate a facility representative who will participate in the local emergency planning process as a facility emergency response coordinator. You must provide notice of this facility representative.	To the LEPC (or the SERC if there is no LEPC, or the Governor if there is no SERC).	Within 60 days after your facility first becomes subject to the requirements of this subpart. If no LEPC exists when you first report, then provide an additional report to the LEPC within 30 days after such LEPC is established for the emergency planning district in which your facility is located.
(c) Changes relevant to emergency planning.	You must provide notice of any changes occurring at your facility that may be relevant to emergency planning.	To the LEPC	Within 30 days after the changes have occurred.
(d) Requested information	You must provide any information necessary for developing or implementing the local emergency plan if the LEPC requests it.	To the LEPC	Promptly. Note: The LEPC may specify a time frame for this information.

§ 355.21 In what format should the information be submitted?

EPA does not require any specific format. EPA recommends that you submit the information described in § 355.20 in writing in order to insure appropriate documentation. The SERC or LEPC may request that this information be submitted in a specific format.

Subpart C—Emergency Release Notification

Who Must Comply

§ 355.30 What facilities must comply with the emergency release notification requirements of this subpart?

You must comply with the emergency release notification requirements in this subpart if both of these two conditions are met:

(a) You produce, use, or store a hazardous chemical at your facility; and

(b) You release a reportable quantity (RQ) of any EHS or of a hazardous substance as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA Hazardous Substance) at your facility. Certain releases are exempted from these requirements. Exempted releases are listed in § 355.31.

Note to paragraph (b): In addition to the emergency release notification requirements of this subpart, releases of CERCLA hazardous substances are subject to the notification requirements under CERCLA. This is explained further in subpart D of this part.

§ 355.31 What types of releases are exempt from the emergency release notification requirements of this subpart?

You do not have to provide emergency release notification under this subpart for any of the following six types of releases of EHSs or CERCLA hazardous substances that occur at your facility:

(a) Any release that results in exposure to persons solely within the boundaries of your facility.

(b) Any release that is a federally permitted release as defined in section 101(10) of CERCLA.

(c) Any release of a pesticide product that is exempt from reporting under section 103(e) of CERCLA.

(d) Any release that does not meet the definition of release under section

101(22) of CERCLA and is therefore exempt from CERCLA section 103(a) reporting.

(e) Any radionuclide release that occurs:

(1) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land.

(2) Naturally from land disturbance activities, including farming, construction, and land disturbance incidental to extraction during mining activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. Land disturbance incidental to extraction includes: Land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw (not beneficiated or processed) materials; and replacing in mined-out areas coal ash, earthen materials from farming or construction, or overburden or other raw materials generated from the exempted mining activities.

(3) From the dumping and transportation of coal and coal ash (including fly ash, bottom ash, and boiler slags), including the dumping and land spreading operations that occur during coal ash uses.

(4) From piles of coal and coal ash, including fly ash, bottom ash, and boiler slags.

(f) Any release less than 1,000 pounds per 24 hours of nitrogen oxide or nitrogen dioxide to the air which is the result of combustion and combustion related activities.

§ 355.32 Which emergency release notification requirements apply to continuous releases?

If the release of an EHS or CERCLA hazardous substance is continuous and stable in quantity and rate at your facility as defined in 40 CFR 302.8(b), then the release qualifies for reduced reporting requirements under this subpart. Under these reduced reporting requirements, you do not need to provide the notifications required under § 355.40. However, in addition to the notifications required under 40 CFR 302.8, you must make all of the following notifications to the community emergency coordinator for the LEPC for any area likely to be affected by the release and to the SERC of any State likely to be affected by the release:

(a) Initial notifications as specified in 40 CFR 302.8 (d) and (e).

(b) Notification of a ''statistically significant increase,'' defined in 40 CFR 302.8(b) as any increase above the upper bound of the reported normal range.

(c) Notification of a ''new release'' as specified in 40 CFR 302.8(g)(1).

(d) Notification of a change in the normal range of the release as specified under 40 CFR 302.8(g)(2).

§ 355.33 What release quantities of EHSs and CERCLA hazardous substances trigger the emergency release notification requirements of this subpart?

The release of a reportable quantity (RQ) of an EHS or CERCLA hazardous substance within any 24-hour period triggers the emergency release notification requirements. RQs for EHSs are listed in Appendices A and B of this part in the column labeled ''reportable quantity.'' RQs for CERCLA hazardous substances are listed in Table 302.4 of 40 CFR 302.4 in the column labeled ''final RQ.''

How To Comply

§ 355.40 What information must I provide?

You must make two separate notifications to comply with the emergency release notification requirements of this subpart: an immediate notification, and as soon as practicable thereafter a written follow-up emergency notification (or notifications, as more information becomes available).

(a) *Immediate notification.* The notice required under this section shall include as much of the following information known at the time. However, the retrieval of this information should not cause a delay in the notification on the emergency response.

(1) The chemical name or identity of any substance involved in the release.

(2) Indicate whether the substance is an EHS.

(3) Provide an estimate of the quantity of any such substance that was released into the environment.

(4) State the time and duration of the release.

(5) The medium or media into which the release occurred.

(6) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(7) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(8) The name and telephone number of the individual (or individuals) to be contacted for further information.

(b) *Written follow-up emergency notification.* Except for releases that occur during transportation or from storage incident to transportation, you must provide a written follow-up emergency notice (or notices, as more information becomes available), as soon as practicable after the release. In the written follow-up emergency notice, you must provide and update the information required in the immediate notification and include additional information with respect to all of the following:

(1) Actions taken to respond and contain the release.

(2) Any known or anticipated acute or chronic health risks associated with the release.

(3) Where appropriate, advice regarding medical attention necessary for exposed individuals.

(c) You are not required to submit a written follow-up notification for a release that occurred during transportation or from storage incident to transportation. See § 355.42(b) for requirements for reporting such releases.

§ 355.41 In what format should the information be submitted?

The immediate notification, described in § 355.40(a), should be oral. The follow-up emergency notification, described in § 355.40(b), shall be in writing. EPA does not specify a particular format for the written follow-up emergency notification.

Note: The LEPC may request a specific format for this information.

§ 355.42 To whom must I submit the information?

(a) You must provide the immediate emergency release notification information and the written follow-up notification to:

(1) The community emergency coordinator for the LEPC of any area likely to be affected by the release (if there is no LEPC, notify the relevant local emergency response personnel); and

(2) The SERC of any State likely to be affected by the release.

(b) For a release that occurs during transportation or from storage incident to transportation, you may meet the requirements of this subpart by notifying the 911 operator (or in the absence of a 911 emergency telephone number, the operator) of the immediate notification information listed in § 355.40(a). You are not required under this subpart to submit a written follow-up notification, as described in § 355.40(b), for such a release.

§ 355.43 When must I submit the information?

(a) You must provide the required emergency release notification

information described under § 355.40(a), immediately.

(b) You must provide the written follow-up emergency notice (or notices, as more information becomes available) described under § 355.40(b), as soon as practicable after the release.

Subpart D—Additional Provisions

§ 355.60 What is the relationship between the emergency release notification requirements of this part and the release notification requirements of CERCLA?

The emergency release notification requirements of this part are in addition to the release notification requirements of CERCLA. If you have a release of a CERCLA hazardous substance, you must comply with the emergency release notification requirements of this part and the release notification requirements of CERCLA section 103, codified at 40 CFR part 302. Use this table to determine which emergency release notification requirements apply to your release:

If a reportable quantity of a substance is released within a 24-hour period at your facility	And if the release is reportable under EPCRA Section 304, you must	And if the release is reportable under CERCLA Section 103, you must
(a) And the substance is on BOTH the list of EHSs (Appendices A and B of this part) AND the list of CERCLA Hazardous Substances (40 CFR 302.4).	Notify the LEPC and the SERC in accordance with §§ 355.40 through 355.43 of this part (except for a release during transportation or from storage incident to transportation; see § 355.42(b)).	Comply with the release notification requirements of CERCLA section 103 and its implementing regulations (40 CFR part 302). Call the NRC at 800–424–8802.
(b) And the substance is on the list of CERCLA Hazardous Substances (40 CFR 302.4) and not on the list of EHSs (Appendices A and B of this part).	Notify the LEPC and the SERC, in accordance with §§ 355.40 through 355.43 of this part (except for a release during transportation or from storage incident to transportation; see in § 355.42(b)).	Comply with the release notification requirements of CERCLA section 103 and its implementing regulations (40 CFR part 302). Call the NRC at 800–424–8802.
(c) And the substance is on the list of EHSs (Appendices A and B of this part) and not the list of CERCLA Hazardous Substances (40 CFR 302.4).	Notify the LEPC and the SERC in accordance with §§ 355.40 through 355.43 of this part (except for a release during transportation or from storage incident to transportation; see § 355.42(b)).	

Note: This table only applies to reportable releases, not to exempt releases.

§ 355.61 How are key words in this part defined?

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

CERCLA hazardous substance means a substance defined in section 101(14) of CERCLA and listed in Table 302.4 of 40 CFR 302.4.

Chief Executive Officer of the Tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the Tribe.

Environment includes water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.

EPCRA means the Emergency Planning and Community Right-To-Know Act of 1986.

Extremely hazardous substance (EHS) means a substance listed in Appendices A and B of this part.

Facility means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person that controls, is controlled by, or under common control with, such person). *Facility* includes manmade structures, as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

Hazardous chemical means any hazardous chemical as defined under 29 CFR 1910.1200(c), except that this term does not include:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used:

(i) For personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. Present in the same form and concentration as a product packaged for distribution and use by the general public means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public;

(ii) In a research laboratory or hospital or other medical facility under the direct supervision of a technically qualified individual; or

(iii) In routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Indian Country means Indian country defined in 18 U.S.C. 1151 as:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Tribe or Tribe means those Tribes federally recognized by the Secretary of the Interior.

LEPC means the Local Emergency Planning Committee appointed by the State Emergency Response Commission.

Medium or media means the environment (i.e., air, water, land).

Mixture means, for the purposes of 40 CFR part 355, a heterogeneous association of substances where the various individual substances retain their identities and can usually be separated by mechanical means. This definition includes, for the purposes of 40 CFR part 355, solutions but does not include alloys or amalgams.

Person means any individual, trust, firm, joint stock company, corporation (including a government corporation),

partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, EHS, or CERCLA hazardous substance.

Reportable quantity means, for any CERCLA hazardous substance, the quantity established in Table 302.4 of 40 CFR 302.4, for such substance. For any EHS, reportable quantity means the quantity established in Appendices A and B of this part for such substance. Unless and until superseded by regulations establishing a reportable quantity for newly listed EHSs or CERCLA hazardous substances, a weight of 1 pound shall be the reportable quantity.

SERC means the State Emergency Response Commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, SERC means the Emergency Response Commission for the Tribe under whose jurisdiction the facility is located. In the absence of a SERC for a State or Indian Tribe, the Governor or the chief executive officer of the tribe, respectively, shall be the SERC. Where there is a cooperative agreement between a State and a Tribe, the SERC shall be the entity identified in the agreement.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, any other territory or possession over which the United States has jurisdiction and Indian Country.

Threshold planning quantity means, for a substance listed in Appendices A and B of this part, the quantity listed in the column ''threshold planning quantity'' for that substance.

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
75–86–5	Acetone Cyanohydrin		10	1,000
1752–30–3	Acetone Thiosemicarbazide		1,000	1,000/10,000
107–02–8	Acrolein		1	500
79–06–1	Acrylamide	f	5,000	1,000/10,000
107–13–1	Acrylonitrile	f	100	10,000
814–68–6	Acrylyl Chloride	d	100	100
111–69–3	Adiponitrile	f	1,000	1,000
116–06–3	Aldicarb	b	1	100/10,000
309–00–2	Aldrin		1	500/10,000
107–18–6	Allyl Alcohol		100	1,000
107–11–9	Allylamine		500	500
20859–73–8	Aluminum Phosphide	a	100	500
54–62–6	Aminopterin		500	500/10,000
78–53–5	Amiton		500	500
3734–97–2	Amiton Oxalate		100	100/10,000
7664–41–7	Ammonia	f	100	500
300–62–9	Amphetamine		1,000	1,000
62–53–3	Aniline	f	5,000	1,000
88–05–1	Aniline, 2,4,6-Trimethyl-		500	500
7783–70–2	Antimony Pentafluoride		500	500
1397–94–0	Antimycin A	b	1,000	1,000/10,000
86–88–4	ANTU		100	500/10,000
1303–28–2	Arsenic Pentoxide		1	100/10,000
1327–53–3	Arsenous Oxide	d	1	100/10,000
7784–34–1	Arsenous Trichloride		1	500
7784–42–1	Arsine		100	100
2642–71–9	Azinphos-Ethyl		100	100/10,000
86–50–0	Azinphos-Methyl		1	10/10,000
98–87–3	Benzal Chloride		5,000	500
98–16–8	Benzenamine, 3-(Trifluoromethyl)-		500	500
100–14–1	Benzene, 1-(Chloromethyl)-4-Nitro-		500	500/10,000
98–05–5	Benzenearsonic Acid		10	10/10,000
3615–21–2	Benzimidazole, 4,5-Dichloro-2-(Trifluoromethyl)-	c	500	500/10,000
98–07–7	Benzotrichloride		10	100
100–44–7	Benzyl Chloride		100	500
140–29–4	Benzyl Cyanide	d	500	500
15271–41–7	Bicyclo[2.2.1]Heptane-2-Carbonitrile, 5-Chloro-6-((((Methylamino)Carbonyl)Oxy)Imino)-, (1s-(1-alpha,2-beta,4-alpha,5-alpha,6E))-.		500	500/10,000
534–07–6	Bis(Chloromethyl) Ketone		10	10/10,000
4044–65–9	Bitoscanate		500	500/10,000
10294–34–5	Boron Trichloride		500	500
7637–07–2	Boron Trifluoride		500	500
353–42–4	Boron Trifluoride Compound With Methyl Ether (1:1)		1,000	1,000
28772–56–7	Bromadiolone		100	100/10,000
7726–95–6	Bromine	f	500	500
1306–19–0	Cadmium Oxide		100	100/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
2223–93–0	Cadmium Stearate	b	1,000	1,000/10,000
7778–44–1	Calcium Arsenate		1	500/10,000
8001–35–2	Camphechlor		1	500/10,000
56–25–7	Cantharidin		100	100/10,000
51–83–2	Carbachol Chloride		500	500/10,000
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-.		100	100/10,000
1563–66–2	Carbofuran		10	10/10,000
75–15–0	Carbon Disulfide	f	100	10,000
786–19–6	Carbophenothion		500	500
57–74–9	Chlordane		1	1,000
470–90–6	Chlorfenvinfos		500	500
7782–50–5	Chlorine		10	100
24934–91–6	Chlormephos		500	500
999–81–5	Chlormequat Chloride	d	100	100/10,000
79–11–8	Chloroacetic Acid		100	100/10,000
107–07–3	Chloroethanol		500	500
627–11–2	Chloroethyl Chloroformate		1,000	1,000
67–66–3	Chloroform	f	10	10,000
542–88–1	Chloromethyl Ether	d	10	100
107–30–2	Chloromethyl Methyl Ether	b	10	100
3691–35–8	Chlorophacinone		100	100/10,000
1982–47–4	Chloroxuron		500	500/10,000
21923–23–9	Chlorthiophos	d	500	500
10025–73–7	Chromic Chloride		1	1/10,000
62207–76–5	Cobalt, ((2,2′-(1,2-Ethanediylbis (Nitrilomethylidyne)) Bis(6-Fluorophenolato))(2-)-N,N′,O,O′)-.		100	100/10,000
10210–68–1	Cobalt Carbonyl	d	10	10/10,000
64–86–8	Colchicine	d	10	10/10,000
56–72–4	Coumaphos		10	100/10,000
5836–29–3	Coumatetralyl		500	500/10,000
95–48–7	Cresol, o-		100	1,000/10,000
535–89–7	Crimidine		100	100/10,000
4170–30–3	Crotonaldehyde		100	1,000
123–73–9	Crotonaldehyde, (E)-		100	1,000
506–68–3	Cyanogen Bromide		1,000	500/10,000
506–78–5	Cyanogen Iodide		1,000	1,000/10,000
2636–26–2	Cyanophos		1,000	1,000
675–14–9	Cyanuric Fluoride		100	100
66–81–9	Cycloheximide		100	100/10,000
108–91–8	Cyclohexylamine	f	10,000	10,000
17702–41–9	Decaborane(14)		500	500/10,000
8065–48–3	Demeton		500	500
919–86–8	Demeton-S-Methyl		500	500
10311–84–9	Dialifor		100	100/10,000
19287–45–7	Diborane		100	100
111–44–4	Dichloroethyl ether		10	10,000
149–74–6	Dichloromethylphenylsilane		1,000	1,000
62–73–7	Dichlorvos		10	1,000
141–66–2	Dicrotophos		100	100
1464–53–5	Diepoxybutane		10	500
814–49–3	Diethyl Chlorophosphate	d	500	500
71–63–6	Digitoxin	b	100	100/10,000
2238–07–5	Diglycidyl Ether		1,000	1,000
20830–75–5	Digoxin	d	10	10/10,000
115–26–4	Dimefox		500	500
60–51–5	Dimethoate		10	500/10,000
2524–03–0	Dimethyl Phosphorochloridothioate		500	500
77–78–1	Dimethyl sulfate		100	500
75–78–5	Dimethyldichlorosilane	d	500	500
57–14–7	Dimethylhydrazine		10	1,000
99–98–9	Dimethyl-p-Phenylenediamine		10	10/10,000
644–64–4	Dimetilan		1	500/10,000
534–52–1	Dinitrocresol		10	10/10,000
88–85–7	Dinoseb		1,000	100/10,000
1420–07–1	Dinoterb		500	500/10,000
78–34–2	Dioxathion		500	500
82–66–6	Diphacinone		10	10/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
152–16–9	Diphosphoramide, Octamethyl-		100	100
298–04–4	Disulfoton		1	500
514–73–8	Dithiazanine Iodide		500	500/10,000
541–53–7	Dithiobiuret		100	100/10,000
316–42–7	Emetine, Dihydrochloride	d	1	1/10,000
115–29–7	Endosulfan		1	10/10,000
2778–04–3	Endothion		500	500/10,000
72–20–8	Endrin		1	500/10,000
106–89–8	Epichlorohydrin	f	100	1,000
2104–64–5	EPN		100	100/10,000
50–14–6	Ergocalciferol	b	1,000	1,000/10,000
379–79–3	Ergotamine Tartrate		500	500/10,000
1622–32–8	Ethanesulfonyl Chloride, 2-Chloro-		500	500
10140–87–1	Ethanol, 1,2-Dichloro-, Acetate		1,000	1,000
563–12–2	Ethion		10	1,000
13194–48–4	Ethoprophos		1,000	1,000
538–07–8	Ethylbis(2-Chloroethyl)Amine	d	500	500
371–62–0	Ethylene Fluorohydrin	b, d	10	10
75–21–8	Ethylene Oxide	f	10	1,000
107–15–3	Ethylenediamine		5,000	10,000
151–56–4	Ethyleneimine		1	500
542–90–5	Ethylthiocyanate		10,000	10,000
22224–92–6	Fenamiphos		10	10/10,000
115–90–2	Fensulfothion	d	500	500
4301–50–2	Fluenetil		100	100/10,000
7782–41–4	Fluorine	e	10	500
640–19–7	Fluoroacetamide		100	100/10,000
144–49–0	Fluoroacetic Acid		10	10/10,000
359–06–8	Fluoroacetyl Chloride	b	10	10
51–21–8	Fluorouracil		500	500/10,000
944–22–9	Fonofos		500	500
50–00–0	Formaldehyde	f	100	500
107–16–4	Formaldehyde Cyanohydrin	d	1,000	1,000
23422–53–9	Formetanate Hydrochloride	d	100	500/10,000
2540–82–1	Formothion		100	100
17702–57–7	Formparanate		100	100/10,000
21548–32–3	Fosthietan		500	500
3878–19–1	Fuberidazole		100	100/10,000
110–00–9	Furan		100	500
13450–90–3	Gallium Trichloride		500	500/10,000
77–47–4	Hexachlorocyclopentadiene	d	10	100
4835–11–4	Hexamethylenediamine, N,N′-Dibutyl-		500	500
302–01–2	Hydrazine		1	1,000
74–90–8	Hydrocyanic Acid		10	100
7647–01–0	Hydrogen Chloride (gas only)	f	5,000	500
7664–39–3	Hydrogen Fluoride		100	100
7722–84–1	Hydrogen Peroxide (Conc > 52%)	f	1,000	1,000
7783–07–5	Hydrogen Selenide		10	10
7783–06–4	Hydrogen Sulfide	f	100	500
123–31–9	Hydroquinone	f	100	500/10,000
13463–40–6	Iron, Pentacarbonyl-		100	100
297–78–9	Isobenzan		100	100/10,000
78–82–0	Isobutyronitrile	d	1,000	1,000
102–36–3	Isocyanic Acid, 3,4-Dichlorophenyl Ester		500	500/10,000
465–73–6	Isodrin		1	100/10,000
55–91–4	Isofluorphate	b	100	100
4098–71–9	Isophorone Diisocyanate	g	500	500
108–23–6	Isopropyl Chloroformate		1,000	1,000
119–38–0	Isopropylmethyl-pyrazolyl Dimethylcarbamate		100	500
78–97–7	Lactonitrile		1,000	1,000
21609–90–5	Leptophos		500	500/10,000
541–25–3	Lewisite	b, d	10	10
58–89–9	Lindane		1	1,000/10,000
7580–67–8	Lithium Hydride	a	100	100
109–77–3	Malononitrile		1,000	500/10,000
12108–13–3	Manganese, Tricarbonyl Methylcyclopentadienyl	d	100	100
51–75–2	Mechlorethamine	b	10	10
950–10–7	Mephosfolan		500	500

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
1600–27–7	Mercuric Acetate		500	500/10,000
7487–94–7	Mercuric Chloride		500	500/10,000
21908–53–2	Mercuric Oxide		500	500/10,000
10476–95–6	Methacrolein Diacetate		1,000	1,000
760–93–0	Methacrylic Anhydride		500	500
126–98–7	Methacrylonitrile	d	1,000	500
920–46–7	Methacryloyl Chloride		100	100
30674–80–7	Methacryloyloxyethyl Isocyanate	d	100	100
10265–92–6	Methamidophos		100	100/10,000
558–25–8	Methanesulfonyl Fluoride		1,000	1,000
950–37–8	Methidathion		500	500/10,000
2032–65–7	Methiocarb		10	500/10,000
16752–77–5	Methomyl	d	100	500/10,000
151–38–2	Methoxyethylmercuric Acetate		500	500/10,000
80–63–7	Methyl 2-Chloroacrylate		500	500
74–83–9	Methyl Bromide	f	1,000	1,000
79–22–1	Methyl Chloroformate	d	1,000	500
60–34–4	Methyl Hydrazine		10	500
624–83–9	Methyl Isocyanate		10	500
556–61–6	Methyl Isothiocyanate	a	500	500
74–93–1	Methyl Mercaptan	f	100	500
3735–23–7	Methyl Phenkapton		500	500
676–97–1	Methyl Phosphonic Dichloride	a	100	100
556–64–9	Methyl Thiocyanate		10,000	10,000
78–94–4	Methyl Vinyl Ketone		10	10
502–39–6	Methylmercuric Dicyanamide		500	500/10,000
75–79–6	Methyltrichlorosilane	d	500	500
1129–41–5	Metolcarb		1,000	100/10,000
7786–34–7	Mevinphos		10	500
315–18–4	Mexacarbate	d	1,000	500/10,000
50–07–7	Mitomycin C		10	500/10,000
6923–22–4	Monocrotophos		10	10/10,000
2763–96–4	Muscimol		1,000	500/10,000
505–60–2	Mustard Gas	d	500	500
13463–39–3	Nickel Carbonyl		10	1
54–11–5	Nicotine	b	100	100
65–30–5	Nicotine Sulfate		100	100/10,000
7697–37–2	Nitric Acid		1,000	1,000
10102–43–9	Nitric Oxide	b	10	100
98–95–3	Nitrobenzene	f	1,000	10,000
1122–60–7	Nitrocyclohexane		500	500
10102–44–0	Nitrogen Dioxide		10	100
62–75–9	Nitrosodimethylamine	d	10	1,000
991–42–4	Norbormide		100	100/10,000
0	Organorhodium Complex (PMN–82–147)		10	10/10,000
630–60–4	Ouabain	b	100	100/10,000
23135–22–0	Oxamyl		100	100/10,000
78–71–7	Oxetane, 3,3-Bis(Chloromethyl)-		500	500
2497–07–6	Oxydisulfoton	d	500	500
10028–15–6	Ozone		100	100
1910–42–5	Paraquat Dichloride		10	10/10,000
2074–50–2	Paraquat Methosulfate		10	10/10,000
56–38–2	Parathion	b	10	100
298–00–0	Parathion-Methyl	b	100	100/10,000
12002–03–8	Paris Green		1	500/10,000
19624–22–7	Pentaborane		500	500
2570–26–5	Pentadecylamine		100	100/10,000
79–21–0	Peracetic Acid		500	500
594–42–3	Perchloromethylmercaptan		100	500
108–95–2	Phenol		1,000	500/10,000
4418–66–0	Phenol, 2,2′-Thiobis(4-Chloro-6-Methyl)-		100	100/10,000
64–00–6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate		10	500/10,000
58–36–6	Phenoxarsine, 10,10′-Oxydi-		500	500/10,000
696–28–6	Phenyl Dichloroarsine	d	1	500
59–88–1	Phenylhydrazine Hydrochloride		1,000	1,000/10,000
62–38–4	Phenylmercury Acetate		100	500/10,000
2097–19–0	Phenylsilatrane	d	100	100/10,000
103–85–5	Phenylthiourea		100	100/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
298–02–2	Phorate		10	10
4104–14–7	Phosacetim		100	100/10,000
947–02–4	Phosfolan		100	100/10,000
75–44–5	Phosgene	f	10	10
13171–21–6	Phosphamidon		100	100
7803–51–2	Phosphine		100	500
2703–13–1	Phosphonothioic Acid, Methyl-, O-Ethyl O-(4-(Methylthio) Phenyl) Ester.		500	500
50782–69–9	Phosphonothioic Acid, Methyl-, S-(2-(Bis(1Methylethyl)Amino)Ethyl) O-Ethyl Ester.		100	100
2665–30–7	Phosphonothioic Acid, Methyl-, O-(4-Nitrophenyl) O-Phenyl Ester		500	500
3254–63–5	Phosphoric Acid, Dimethyl 4-(Methylthio)Phenyl Ester		500	500
2587–90–8	Phosphorothioic Acid, O,O-Dimethyl-S-(2-Methylthio) Ethyl Ester	b, c	500	500
7723–14–0	Phosphorus	a, d	1	100
10025–87–3	Phosphorus Oxychloride		1,000	500
10026–13–8	Phosphorus Pentachloride	a	500	500
7719–12–2	Phosphorus Trichloride		1,000	1,000
57–47–6	Physostigmine		100	100/10,000
57–64–7	Physostigmine, Salicylate (1:1)		100	100/10,000
124–87–8	Picrotoxin		500	500/10,000
110–89–4	Piperidine		1,000	1,000
23505–41–1	Pirimifos-Ethyl		1,000	1,000
10124–50–2	Potassium Arsenite		1	500/10,000
151–50–8	Potassium Cyanide	a	10	100
506–61–6	Potassium Silver Cyanide	a	1	500
2631–37–0	Promecarb	d	1,000	500/10,000
106–96–7	Propargyl Bromide		10	10
57–57–8	Propiolactone, Beta-		10	500
107–12–0	Propionitrile		10	500
542–76–7	Propionitrile, 3-Chloro-		1,000	1,000
70–69–9	Propiophenone, 4-Amino-	c	100	100/10,000
109–61–5	Propyl Chloroformate		500	500
75–56–9	Propylene Oxide	f	100	10,000
75–55–8	Propyleneimine		1	10,000
2275–18–5	Prothoate		100	100/10,000
129–00–0	Pyrene	b	5,000	1,000/10,000
140–76–1	Pyridine, 2-Methyl-5-Vinyl-		500	500
504–24–5	Pyridine, 4-Amino-	d	1,000	500/10,000
1124–33–0	Pyridine, 4-Nitro-,l-Oxide		500	500/10,000
53558–25–1	Pyriminil	d	100	100/10,000
14167–18–1	Salcomine		500	500/10,000
107–44–8	Sarin	d	10	10
7783–00–8	Selenious Acid		10	1,000/10,000
7791–23–3	Selenium Oxychloride		500	500
563–41–7	Semicarbazide Hydrochloride		1,000	1,000/10,000
3037–72–7	Silane, (4-Aminobutyl)Diethoxymethyl-		1,000 1,00	0
7631–89–2	Sodium Arsenate		1	1,000/10,000
7784–46–5	Sodium Arsenite		1	500/10,000
26628–22–8	Sodium Azide ($Na(N_3)$)	a	1,000	500
124–65–2	Sodium Cacodylate		100	100/10,000
143–33–9	Sodium Cyanide (Na(CN))	a	10	100
62–74–8	Sodium Fluoroacetate		10	10/10,000
13410–01–0	Sodium Selenate		100	100/10,000
10102–18–8	Sodium Selenite	d	100	100/10,000
10102–20–2	Sodium Tellurite		500	500/10,000
900–95–8	Stannane, Acetoxytriphenyl-	c	500	500/10,000
57–24–9	Strychnine	b	10	100/10,000
60–41–3	Strychnine Sulfate		10	100/10,000
3689–24–5	Sulfotep		100	500
3569–57–1	Sulfoxide, 3-Chloropropyl Octyl		500	500
7446–09–5	Sulfur Dioxide	f	500	500
7783–60–0	Sulfur Tetrafluoride		100	100
7446–11–9	Sulfur Trioxide	a	100	100
7664–93–9	Sulfuric Acid		1,000	1,000
77–81–6	Tabun	b, d	10	10
7783–80–4	Tellurium Hexafluoride	e	100	100
107–49–3	TEPP		10	100
13071–79–9	Terbufos	d	100	100

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
78–00–2	Tetraethyllead	b	10	100
597–64–8	Tetraethyltin	b	100	100
75–74–1	Tetramethyllead	b, f	100	100
509–14–8	Tetranitromethane		10	500
10031–59–1	Thallium Sulfate	d	100	100/10,000
6533–73–9	Thallous Carbonate	b, d	100	100/10,000
7791–12–0	Thallous Chloride	b, d	100	100/10,000
2757–18–8	Thallous Malonate	b, d	100	100/10,000
7446–18–6	Thallous Sulfate		100	100/10,000
2231–57–4	Thiocarbazide		1,000	1,000/10,000
39196–18–4	Thiofanox		100	100/10,000
297–97–2	Thionazin		100	500
108–98–5	Thiophenol		100	500
79–19–6	Thiosemicarbazide		100	100/10,000
5344–82–1	Thiourea, (2-Chlorophenyl)-		100	100/10,000
614–78–8	Thiourea, (2-Methylphenyl)-		500	500/10,000
7550–45–0	Titanium Tetrachloride		1,000	100
584–84–9	Toluene 2,4-Diisocyanate		100	500
91–08–7	Toluene 2,6-Diisocyanate		100	100
110–57–6	Trans-1,4-Dichlorobutene		500	500
1031–47–6	Triamiphos		500	500/10,000
24017–47–8	Triazofos		500	500
76–02–8	Trichloroacetyl Chloride		500	500
115–21–9	Trichloroethylsilane	d	500	500
327–98–0	Trichloronate	e	500	500
98–13–5	Trichlorophenylsilane	d	500	500
1558–25–4	Trichloro(Chloromethyl)Silane		100	100
27137–85–5	Trichloro(Dichlorophenyl) Silane		500	500
998–30–1	Triethoxysilane		500	500
75–77–4	Trimethylchlorosilane		1,000	1,000
824–11–3	Trimethylolpropane Phosphite	d	100	100/10,000
1066–45–1	Trimethyltin Chloride		500	500/10,000
639–58–7	Triphenyltin Chloride		500	500/10,000
555–77–1	Tris(2-Chloroethyl)Amine	d	100	100
2001–95–8	Valinomycin	b	1,000	1,000/10,000
1314–62–1	Vanadium Pentoxide		1,000	100/10,000
108–05–4	Vinyl Acetate Monomer	f	5,000	1,000
81–81–2	Warfarin		100	500/10,000
129–06–6	Warfarin Sodium	d	100	100/10,000
28347–13–9	Xylylene Dichloride		100	100/10,000
58270–08–9	Zinc, Dichloro(4,4-Dimethyl-5((((Methylamino)Carbonyl) Oxy)Imino)Pentanenitrile)-, (T-4)-.		100	100/10,000
1314–84–7	Zinc Phosphide	a	100	500

* Only the statutory or final RQ is shown. For more information, see 40 CFR 355.61.

Notes:

a. This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.

b. The calculated TPQ changed after technical review as described in a technical support document for the final rule, April 22, 1987.

c. Chemicals added by final rule, April 22, 1987.

d. Revised TPQ based on new or re-evaluated toxicity data, April 22, 1987.

e. The TPQ was revised due to calculation error, April 22, 1987.

f. Chemicals on the original list that do not meet toxicity criteria but because of their acute lethality, high production volume and known risk are considered chemicals of concern (“Other chemicals”), November 17, 1986 and February 15, 1990.

g. The TPQ was recalculated (September 8, 2003) since it was mistakenly calculated in the April 22, 1987 final rule under the wrong assumption that this chemical is a reactive solid, when in fact it is a liquid. RQ for this chemical was adjusted on September 11, 2006.

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
0	Organorhodium Complex (PMN–82–147)		10	10/10,000
50–00–0	Formaldehyde	f	100	500
50–07–7	Mitomycin C		10	500/10,000
50–14–6	Ergocalciferol	b	1,000	1,000/10,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
51–21–8	Fluorouracil		500	500/10,000
51–75–2	Mechlorethamine	b	10	10
51–83–2	Carbachol Chloride		500	500/10,000
54–11–5	Nicotine	b	100	100
54–62–6	Aminopterin		500	500/10,000
55–91–4	Isofluorphate	b	100	100
56–25–7	Cantharidin		100	100/10,000
56–38–2	Parathion	b	10	100
56–72–4	Coumaphos		10	100/10,000
57–14–7	Dimethylhydrazine		10	1,000
57–24–9	Strychnine	b	10	100/10,000
57–47–6	Physostigmine		100	100/10,000
57–57–8	Propiolactone, Beta-		10	500
57–64–7	Physostigmine, Salicylate (1:1)		100	100/10,000
57–74–9	Chlordane		1	1,000
58–36–6	Phenoxarsine, 10,10′-Oxydi-		500	500/10,000
58–89–9	Lindane		1	1,000/10,000
59–88–1	Phenylhydrazine Hydrochloride		1,000	1,000/10,000
60–34–4	Methyl Hydrazine		10	500
60–41–3	Strychnine sulfate		10	100/10,000
60–51–5	Dimethoate		10	500/10,000
62–38–4	Phenylmercury Acetate		100	500/10,000
62–53–3	Aniline	f	5,000	1,000
62–73–7	Dichlorvos		10	1,000
62–74–8	Sodium Fluoroacetate		10	10/10,000
62–75–9	Nitrosodimethylamine	d	10	1,000
64–00–6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate		10	500/10,000
64–86–8	Colchicine	d	10	10/10,000
65–30–5	Nicotine sulfate		100	100/10,000
66–81–9	Cycloheximide		100	100/10,000
67–66–3	Chloroform	f	10	10,000
70–69–9	Propiophenone, 4-Amino-	c	100	100/10,000
71–63–6	Digitoxin	b	100	100/10,000
72–20–8	Endrin		1	500/10,000
74–83–9	Methyl Bromide	f	1,000	1,000
74–90–8	Hydrocyanic Acid		10	100
74–93–1	Methyl Mercaptan	f	100	500
75–15–0	Carbon Disulfide	f	100	10,000
75–21–8	Ethylene Oxide	f	10	1,000
75–44–5	Phosgene	f	10	10
75–55–8	Propyleneimine		1	10,000
75–56–9	Propylene Oxide	f	100	10,000
75–74–1	Tetramethyllead	b, f	100	100
75–77–4	Trimethylchlorosilane		1,000	1,000
75–78–5	Dimethyldichlorosilane	d	500	500
75–79–6	Methyltrichlorosilane	d	500	500
75–86–5	Acetone Cyanohydrin		10	1,000
76–02–8	Trichloroacetyl Chloride		500	500
77–47–4	Hexachlorocyclopentadiene	d	10	100
77–78–1	Dimethyl Sulfate		100	500
77–81–6	Tabun	b, d	10	10
78–00–2	Tetraethyllead	b	10	100
78–34–2	Dioxathion		500	500
78–53–5	Amiton		500	500
78–71–7	Oxetane, 3,3-Bis(Chloromethyl)-		500	500
78–82–0	Isobutyronitrile	d	1,000	1,000
78–94–4	Methyl Vinyl Ketone		10	10
78–97–7	Lactonitrile		1,000	1,000
79–06–1	Acrylamide	f	5,000	1,000/10,000
79–11–8	Chloroacetic Acid		100	100/10,000
79–19–6	Thiosemicarbazide		100	100/10,000
79–21–0	Peracetic Acid		500	500
79–22–1	Methyl Chloroformate	d	1,000	500
80–63–7	Methyl 2-Chloroacrylate		500	500
81–81–2	Warfarin		100	500/10,000
82–66–6	Diphacinone		10	10/10,000
86–50–0	Azinphos-Methyl		1	10/10,000
86–88–4	ANTU		100	500/10,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
88–05–1	Aniline, 2,4,6-Trimethyl-		500	500
88–85–7	Dinoseb		1,000	100/10,000
91–08–7	Toluene 2,6-Diisocyanate		100	100
95–48–7	Cresol, o-		100	1,000/10,000
98–05–5	Benzenearsonic Acid		10	10/10,000
98–07–7	Benzotrichloride		10	100
98–13–5	Trichlorophenylsilane	d	500	500
98–16–8	Benzenamine, 3-(Trifluoromethyl)-		500	500
98–87–3	Benzal Chloride		5,000	500
98–95–3	Nitrobenzene	f	1,000	10,000
99–98–9	Dimethyl-p-Phenylenediamine		10	10/10,000
100–14–1	Benzene, 1-(Chloromethyl)-4-Nitro-		500	500/10,000
100–44–7	Benzyl Chloride		100	500
102–36–3	Isocyanic Acid, 3,4-Dichlorophenyl Ester		500	500/10,000
103–85–5	Phenylthiourea		100	100/10,000
106–89–8	Epichlorohydrin	f	100	1,000
106–96–7	Propargyl Bromide		10	10
107–02–8	Acrolein		1	500
107–07–3	Chloroethanol		500	500
107–11–9	Allylamine		500	500
107–12–0	Propionitrile		10	500
107–13–1	Acrylonitrile	f	100	10,000
107–15–3	Ethylenediamine		5,000	10,000
107–16–4	Formaldehyde Cyanohydrin	d	1,000	1,000
107–18–6	Allyl Alcohol		100	1,000
107–30–2	Chloromethyl Methyl Ether	b	10	100
107–44–8	Sarin	d	10	10
107–49–3	TEPP		10	100
108–05–4	Vinyl Acetate Monomer	f	5,000	1,000
108–23–6	Isopropyl Chloroformate		1,000	1,000
108–91–8	Cyclohexylamine	f	10,000	10,000
108–95–2	Phenol		1,000	500/10,000
108–98–5	Thiophenol		100	500
109–61–5	Propyl Chloroformate		500	500
109–77–3	Malononitrile		1,000	500/10,000
110–00–9	Furan		100	500
110–57–6	Trans-1,4-Dichlorobutene		500	500
110–89–4	Piperidine		1,000	1,000
111–44–4	Dichloroethyl Ether		10	10,000
111–69–3	Adiponitrile	f	1,000	1,000
115–21–9	Trichloroethylsilane	d	500	500
115–26–4	Dimefox		500	500
115–29–7	Endosulfan		1	10/10,000
115–90–2	Fensulfothion	d	500	500
116–06–3	Aldicarb	b	1	100/10,000
119–38–0	Isopropylmethyl-pyrazolyl Dimethylcarbamate		100	500
123–31–9	Hydroquinone	f	100	500/10,000
123–73–9	Crotonaldehyde, (E)-		100	1,000
124–65–2	Sodium Cacodylate		100	100/10,000
124–87–8	Picrotoxin		500	500/10,000
126–98–7	Methacrylonitrile	d	1,000	500
129–00–0	Pyrene	b	5,000	1,000/10,000
129–06–6	Warfarin Sodium	d	100	100/10,000
140–29–4	Benzyl Cyanide	d	500	500
140–76–1	Pyridine, 2-Methyl-5-Vinyl-		500	500
141–66–2	Dicrotophos		100	100
143–33–9	Sodium Cyanide (Na(CN))	a	10	100
144–49–0	Fluoroacetic Acid		10	10/10,000
149–74–6	Dichloromethylphenylsilane		1,000	1,000
151–38–2	Methoxyethylmercuric Acetate		500	500/10,000
151–50–8	Potassium Cyanide	a	10	100
151–56–4	Ethyleneimine		1	500
152–16–9	Diphosphoramide, Octamethyl-		100	100
297–78–9	Isobenzan		100	100/10,000
297–97–2	Thionazin		100	500
298–00–0	Parathion-Methyl	b	100	100/10,000
298–02–2	Phorate		10	10
298–04–4	Disulfoton		1	500

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
300–62–9	Amphetamine		1,000	1,000
302–01–2	Hydrazine		1	1,000
309–00–2	Aldrin		1	500/10,000
315–18–4	Mexacarbate		1,000	500/10,000
316–42–7	Emetine, Dihydrochloride	d	1	1/10,000
327–98–0	Trichloronate	e	500	500
353–42–4	Boron Trifluoride Compound With Methyl Ether (1:1)		1,000	1,000
359–06–8	Fluoroacetyl Chloride	b	10	10
371–62–0	Ethylene Fluorohydrin	b, d	10	10
379–79–3	Ergotamine Tartrate		500	500/10,000
465–73–6	Isodrin		1	100/10,000
470–90–6	Chlorfenvinfos		500	500
502–39–6	Methylmercuric Dicyanamide		500	500/10,000
504–24–5	Pyridine, 4-Amino-	d	1,000	500/10,000
505–60–2	Mustard Gas	d	500	500
506–61–6	Potassium Silver Cyanide	a	1	500
506–68–3	Cyanogen Bromide		1,000	500/10,000
506–78–5	Cyanogen Iodide		1,000	1,000/10,000
509–14–8	Tetranitromethane		10	500
514–73–8	Dithiazanine Iodide		500	500/10,000
534–07–6	Bis(Chloromethyl) Ketone		10	10/10,000
534–52–1	Dinitrocresol		10	10/10,000
535–89–7	Crimidine		100	100/10,000
538–07–8	Ethylbis(2-Chloroethyl)Amine	d	500	500
541–25–3	Lewisite	b, d	10	10
541–53–7	Dithiobiuret		100	100/10,000
542–76–7	Propionitrile, 3-Chloro-		1,000	1,000
542–88–1	Chloromethyl Ether	d	10	100
542–90–5	Ethylthiocyanate		10,000	10,000
555–77–1	Tris(2-Chloroethyl)Amine	d	100	100
556–61–6	Methyl Isothiocyanate	a	500	500
556–64–9	Methyl Thiocyanate		10,000	10,000
558–25–8	Methanesulfonyl Fluoride		1,000	1,000
563–12–2	Ethion		10	1,000
563–41–7	Semicarbazide Hydrochloride		1,000	1,000/10,000
584–84–9	Toluene 2,4-Diisocyanate		100	500
594–42–3	Perchloromethylmercaptan		100	500
597–64–8	Tetraethyltin	b	100	100
614–78–8	Thiourea, (2-Methylphenyl)-		500	500/10,000
624–83–9	Methyl Isocyanate		10	500
627–11–2	Chloroethyl Chloroformate		1,000	1,000
630–60–4	Ouabain	b	100	100/10,000
639–58–7	Triphenyltin Chloride		500	500/10,000
640–19–7	Fluoroacetamide		100	100/10,000
644–64–4	Dimetilan		1	500/10,000
675–14–9	Cyanuric Fluoride		100	100
676–97–1	Methyl Phosphonic Dichloride	a	100	100
696–28–6	Phenyl Dichloroarsine	d	1	500
760–93–0	Methacrylic Anhydride		500	500
786–19–6	Carbophenothion		500	500
814–49–3	Diethyl Chlorophosphate	d	500	500
814–68–6	Acrylyl Chloride	d	100	100
824–11–3	Trimethylolpropane Phosphite	d	100	100/10,000
900–95–8	Stannane, Acetoxytriphenyl-	c	500	500/10,000
919–86–8	Demeton-S-Methyl		500	500
920–46–7	Methacryloyl Chloride		100	100
944–22–9	Fonofos		500	500
947–02–4	Phosfolan		100	100/10,000
950–10–7	Mephosfolan		500	500
950–37–8	Methidathion		500	500/10,000
991–42–4	Norbormide		100	100/10,000
998–30–1	Triethoxysilane		500	500
999–81–5	Chlormequat Chloride	d	100	100/10,000
1031–47–6	Triamiphos		500	500/10,000
1066–45–1	Trimethyltin Chloride		500	500/10,000
1122–60–7	Nitrocyclohexane		500	500
1124–33–0	Pyridine, 4-Nitro-,1-Oxide		500	500/10,000
1129–41–5	Metolcarb		1,000	100/10,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
1303–28–2	Arsenic Pentoxide		1	100/10,000
1306–19–0	Cadmium Oxide		100	100/10,000
1314–62–1	Vanadium Pentoxide		1,000	100/10,000
1314–84–7	Zinc Phosphide	a	100	500
1327–53–3	Arsenous Oxide	d	1	100/10,000
1397–94–0	Antimycin A	b	1,000	1,000/10,000
1420–07–1	Dinoterb		500	500/10,000
1464–53–5	Diepoxybutane		10	500
1558–25–4	Trichloro(Chloromethyl)Silane		100	100
1563–66–2	Carbofuran		10	10/10,000
1600–27–7	Mercuric Acetate		500	500/10,000
1622–32–8	Ethanesulfonyl Chloride, 2-Chloro-		500	500
1752–30–3	Acetone Thiosemicarbazide		1,000	1,000/10,000
1910–42–5	Paraquat Dichloride		10	10/10,000
1982–47–4	Chloroxuron		500	500/10,000
2001–95–8	Valinomycin	b	1,000	1,000/10,000
2032–65–7	Methiocarb		10	500/10,000
2074–50–2	Paraquat Methosulfate		10	10/10,000
2097–19–0	Phenylsilatrane	d	100	100/10,000
2104–64–5	EPN		100	100/10,000
2223–93–0	Cadmium Stearate	b	1,000	1,000/10,000
2231–57–4	Thiocarbazide		1,000	1,000/10,000
2238–07–5	Diglycidyl Ether		1,000	1,000
2275–18–5	Prothoate		100	100/10,000
2497–07–6	Oxydisulfoton	d	500	500
2524–03–0	Dimethyl Phosphorochloridothioate		500	500
2540–82–1	Formothion		100	100
2570–26–5	Pentadecylamine		100	100/10,000
2587–90–8	Phosphorothioic Acid, O,O-Dimethyl-S-(2-Methylthio) Ethyl Ester	b, c	500	500
2631–37–0	Promecarb	d	1,000	500/10,000
2636–26–2	Cyanophos		1,000	1,000
2642–71–9	Azinphos-Ethyl		100	100/10,000
2665–30–7	Phosphonothioic Acid, Methyl-, O-(4-Nitrophenyl) O-Phenyl Ester		500	500
2703–13–1	Phosphonothioic Acid, Methyl-, O-Ethyl O-(4-(Methylthio)Phenyl) Ester.		500	500
2757–18–8	Thallous Malonate	b, d	100	100/10,000
2763–96–4	Muscimol		1,000	500/10,000
2778–04–3	Endothion		500	500/10,000
3037–72–7	Silane, (4-Aminobutyl)Diethoxymethyl-		1,000	1,000
3254–63–5	Phosphoric Acid, Dimethyl 4-(Methylthio)Phenyl Ester		500	500
3569–57–1	Sulfoxide, 3-Chloropropyl Octyl		500	500
3615–21–2	Benzimidazole, 4,5-Dichloro-2-(Trifluoromethyl)-	c	500	500/10,000
3689–24–5	Sulfotep		100	500
3691–35–8	Chlorophacinone		100	100/10,000
3734–97–2	Amiton Oxalate		100	100/10,000
3735–23–7	Methyl Phenkapton		500	500
3878–19–1	Fuberidazole		100	100/10,000
4044–65–9	Bitoscanate		500	500/10,000
4098–71–9	Isophorone Diisocyanate	g	500	500
4104–14–7	Phosacetim		100	100/10,000
4170–30–3	Crotonaldehyde		100	1,000
4301–50–2	Fluenetil		100	100/10,000
4418–66–0	Phenol, 2,2′-Thiobis(4-Chloro-6-Methyl)-		100	100/10,000
4835–11–4	Hexamethylenediamine, N,N′-Dibutyl-		500	500
5344–82–1	Thiourea, (2-Chlorophenyl)-		100	100/10,000
5836–29–3	Coumatetralyl		500	500/10,000
6533–73–9	Thallous Carbonate	b, d	100	100/10,000
6923–22–4	Monocrotophos		10	10/10,000
7446–09–5	Sulfur Dioxide	f	500	500
7446–11–9	Sulfur Trioxide	a	100	100
7446–18–6	Thallous Sulfate		100	100/10,000
7487–94–7	Mercuric Chloride		500	500/10,000
7550–45–0	Titanium Tetrachloride		1,000	100
7580–67–8	Lithium Hydride	a	100	100
7631–89–2	Sodium Arsenate		1	1,000/10,000
7637–07–2	Boron Trifluoride		500	500
7647–01–0	Hydrogen Chloride (gas only)	f	5,000	500
7664–39–3	Hydrogen Fluoride		100	100

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
7664–41–7	Ammonia	f	100	500
7664–93–9	Sulfuric Acid		1,000	1,000
7697–37–2	Nitric Acid		1,000	1,000
7719–12–2	Phosphorus Trichloride		1,000	1,000
7722–84–1	Hydrogen Peroxide (Conc >52%)	f	1,000	1,000
7723–14–0	Phosphorus	a, d	1	100
7726–95–6	Bromine	f	500	500
7778–44–1	Calcium Arsenate		1	500/10,000
7782–41–4	Fluorine	e	10	500
7782–50–5	Chlorine		10	100
7783–00–8	Selenious Acid		10	1,000/10,000
7783–06–4	Hydrogen Sulfide	f	100	500
7783–07–5	Hydrogen Selenide		10	10
7783–60–0	Sulfur Tetrafluoride		100	100
7783–70–2	Antimony Pentafluoride		500	500
7783–80–4	Tellurium Hexafluoride	e	100	100
7784–34–1	Arsenous Trichloride		1	500
7784–42–1	Arsine		100	100
7784–46–5	Sodium Arsenite		1	500/10,000
7786–34–7	Mevinphos		10	500
7791–12–0	Thallous Chloride	b, d	100	100/10,000
7791–23–3	Selenium Oxychloride		500	500
7803–51–2	Phosphine		100	500
8001–35–2	Camphechlor		1	500/10,000
8065–48–3	Demeton		500	500
10025–73–7	Chromic Chloride		1	1/10,000
10025–87–3	Phosphorus Oxychloride		1,000	500
10026–13–8	Phosphorus Pentachloride	a	500	500
10028–15–6	Ozone		100	100
10031–59–1	Thallium Sulfate	d	100	100/10,000
10102–18–8	Sodium Selenite	d	100	100/10,000
10102–20–2	Sodium Tellurite		500	500/10,000
10102–43–9	Nitric Oxide	b	10	100
10102–44–0	Nitrogen Dioxide		10	100
10124–50–2	Potassium Arsenite		1	500/10,000
10140–87–1	Ethanol, 1,2-Dichloro-, Acetate		1,000	1,000
10210–68–1	Cobalt Carbonyl	d	10	10/10,000
10265–92–6	Methamidophos		100	100/10,000
10294–34–5	Boron Trichloride		500	500
10311–84–9	Dialifor		100	100/10,000
10476–95–6	Methacrolein Diacetate		1,000	1,000
12002–03–8	Paris Green		1	500/10,000
12108–13–3	Manganese, Tricarbonyl Methylcyclopentadienyl	d	100	100
13071–79–9	Terbufosh	d	100	100
13171–21–6	Phosphamidon		100	100
13194–48–4	Ethoprophos		1,000	1,000
13410–01–0	Sodium Selenate		100	100/10,000
13450–90–3	Gallium Trichloride		500	500/10,000
13463–39–3	Nickel Carbonyl		10	1
13463–40–6	Iron, Pentacarbonyl-		100	100
14167–18–1	Salcomine		500	500/10,000
15271–41–7	Bicyclo[2.2.1]Heptane-2-Carbonitrile, 5-Chloro-6-((((Methylamino)Carbonyl)Oxy)Imino)-, (1s-(1-alpha,2-beta,4-alpha,5-alpha,6E))-.		500	500/10,000
16752–77–5	Methomyl	d	100	500/10,000
17702–41–9	Decaborane(14)		500	500/10,000
17702–57–7	Formparanate		100	100/10,000
19287–45–7	Diborane		100	100
19624–22–7	Pentaborane		500	500
20830–75–5	Digoxin	d	10	10/10,000
20859–73–8	Aluminum Phosphide	a	100	500
21548–32–3	Fosthietan		500	500
21609–90–5	Leptophos		500	500/10,000
21908–53–2	Mercuric Oxide		500	500/10,000
21923–23–9	Chlorthiophos	d	500	500
22224–92–6	Fenamiphos		10	10/10,000
23135–22–0	Oxamyl		100	100/10,000
23422–53–9	Formetanate Hydrochloride	d	100	500/10,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
23505–41–1	Pirimifos-Ethyl		1,000	1,000
24017–47–8	Triazofos		500	500
24934–91–6	Chlormephos		500	500
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-.		100	100/10,000
26628–22–8	Sodium Azide ($Na(N_3)$)	a	1,000	500
27137–85–5	Trichloro(Dichlorophenyl)Silane		500	500
28347–13–9	Xylylene Dichloride		100	100/10,000
28772–56–7	Bromadiolone		100	100/10,000
30674–80–7	Methacryloyloxyethyl Isocyanateh		100	100
39196–18–4	Thiofanox		100	100/10,000
50782–69–9	Phosphonothioic Acid, Methyl-, S-(2-(Bis(1-Methylethyl)Amino)Ethyl) O-Ethyl Ester.		100	100
53558–25–1	Pyriminil	d	100	100/10,000
58270–08–9	Zinc, Dichloro(4,4-Dimethyl-5((((Methylamino) Carbonyl)Oxy) Imino)Pentanenitrile)-, (T–4)-.		100	100/10,000
62207–76–5	Cobalt, ((2,2′-(1,2-Ethanediylbis (Nitrilomethylidyne)) Bis(6-Fluorophenolato)) (2-)-N,N′,O,O′)-.		100	100/10,000

* Only the statutory or final RQ is shown. For more information, *see* 40 CFR 355.61.

Notes:

a. This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.

b. The calculated TPQ changed after technical review as described in a technical support document for the final rule, April 22, 1987.

c. Chemicals added by final rule, April 22, 1987.

d. Revised TPQ based on new or re-evaluated toxicity data, April 22, 1987.

e. The TPQ was revised due to calculation error, April 22, 1987.

f. Chemicals on the original list that do not meet toxicity criteria but because of their acute lethality, high production volume and known risk are considered chemicals of concern (''Other chemicals''). (November 17, 1986, and February 15, 1990.)

g. The TPQ was recalculated (September 8, 2003) since it was mistakenly calculated in the April 22, 1987, final rule under the wrong assumption that this chemical is a reactive solid, when in fact it is a liquid. RQ for this chemical was adjusted on September 11, 2006.

■ 2. Part 370 is revised to read as follows:

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

Subpart A—General Information

Sec.

370.1 What is the purpose of this part?

370.2 Who do ''you,'' ''I,'' and ''your'' refer to in this part?

370.3 Which section contains the definitions of the key words used in this part?

Subpart B—Who Must Comply

370.10 Who must comply with the hazardous chemical reporting requirements of this part?

370.11 [Reserved]

370.12 What hazardous chemicals must I report under this part?

370.13 What substances are exempt from these reporting requirements?

370.14 How do I report mixtures containing hazardous chemicals?

Subpart C—Reporting Requirements

370.20 What are the reporting requirements of this part?

How to Comply With MSDS Reporting

370.30 What information must I provide and what format must I use?

370.31 Do I have to update the information?

370.32 To whom must I submit the information?

370.33 When must I submit the information?

How To Comply With Inventory Reporting

370.40 What information must I provide and what format must I use?

370.41 What is Tier I inventory information?

370.42 What is Tier II inventory information?

370.43 What codes are used to report Tier I and Tier II inventory information?

370.44 To whom must I submit the inventory information?

370.45 When must I submit the inventory information?

Subpart D—Community Access to Information

370.60 How does a person obtain MSDS information about a specific facility?

370.61 How does a person obtain inventory information about a specific facility?

370.62 What information may a State or local official request from a facility?

370.63 What responsibilities do the SERC and the LEPC have to make requested information available?

370.64 What information can I claim as trade secret or confidential?

370.65 Must I allow the local fire department to inspect my facility and must I provide specific location information about hazardous chemicals at my facility?

370.66 How are key words in this part defined?

Authority: Sections 302, 311, 312, 322, 324, 325, 327, 328, and 329 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (Pub. L. 99–499, 100 Stat. 1613, 42 U.S.C. 11002, 11021, 11022, 11042, 11044, 11045, 11047, 11048, and 11049).

Subpart A—General Information

§ 370.1 What is the purpose of this part?

(a) This part (40 CFR part 370) establishes reporting requirements for providing the public with important information on the hazardous chemicals in their communities. Reporting raises community awareness of chemical hazards and aids in the development of State and local emergency response plans. The reporting requirements established under this part consist of Material Safety Data Sheet (MSDS) reporting and inventory reporting.

(b) This part is written in a special format to make it easier to understand the regulatory requirements. Like other Environmental Protection Agency (EPA) regulations, this part establishes enforceable legal requirements. Information considered non-binding guidance under EPCRA is indicated in this regulation by the word ''note'' and

a smaller typeface. Such notes are provided for information purposes only and are not considered legally binding under this part.

§ 370.2 Who do ''you,'' ''I,'' and ''your'' refer to in this part?

Throughout this part, ''you,'' ''I,'' and ''your'' refer to the owner or operator of a facility.

§ 370.3 Which section contains the definitions of the key words used in this part?

The definitions of key words used in this part are in § 370.66. It is important to read the definitions for key words because the definition explains the word's specific meaning in the regulations in this part.

Subpart B—Who Must Comply

§ 370.10 Who must comply with the hazardous chemical reporting requirements of this part?

(a) You must comply with the reporting requirements of this part if the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS) require your facility to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical and if either of the following conditions is met:

(1) A hazardous chemical that is an Extremely Hazardous Substance (EHS) is present at your facility at any one time in an amount equal to or greater than 500 pounds (227 kg—approximately 55 gallons) or the Threshold Planning Quantity (TPQ), whichever is lower. EHSs and their TPQs are listed in Appendices A and B of 40 CFR part 355.

(2) A hazardous chemical that is not an EHS is present at your facility at any one time in an amount equal to or greater than the threshold level for that hazardous chemical. Threshold levels for such hazardous chemicals are:

(i) For any hazardous chemical that does not meet the criteria in paragraph (a)(2)(ii) or (iii) of this section, the threshold level is 10,000 pounds (or 4,540 kg).

(ii) For gasoline at a retail gas station (For purposes of this part, retail gas station means a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land.), the threshold level is 75,000 gallons (approximately 283,900 liters) (all grades combined). This threshold is only applicable for gasoline that was in tank(s) entirely underground and was in compliance at all times during the preceding calendar year with all applicable Underground Storage Tank (UST) requirements at 40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281.

(iii) For diesel fuel at a retail gas station (For purposes of this part, retail gas station means a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land.), the threshold level is 100,000 gallons (approximately 378,500 liters) (all grades combined). This threshold is only applicable for diesel fuel that was in tank(s) entirely underground and was in compliance at all times during the preceding calendar year with all applicable Underground Storage Tank (UST) requirements at 40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281.

(b) The threshold level for responding to the following requests is zero.

(1) If your LEPC requests that you submit an MSDS for a hazardous chemical for which you have not submitted an MSDS to your LEPC; or

(2) If your LEPC, SERC, or the fire department with jurisdiction over your facility requests that you submit Tier II information.

§ 370.11 [Reserved]

§ 370.12 What hazardous chemicals must I report under this part?

(a) You must report any hazardous chemical for which you are required to prepare or have available an MSDS under OSHA HCS that is present at your facility equal to or above the applicable threshold specified in § 370.10. (Specific exemptions from reporting are in § 370.13.)

(b) The EPA has not issued a list of hazardous chemicals subject to reporting under this part. A substance is a hazardous chemical if it is required to have an MSDS and meets the definition of hazardous chemical under the OSHA regulations found at 29 CFR 1910.1200(c).

§ 370.13 What substances are exempt from these reporting requirements?

You do not have to report substances for which you are not required to have an MSDS under the OSHA regulations, or that are excluded from the definition of hazardous chemical under EPCRA section 311(e). Each of the following substances are excluded under EPCRA section 311(e):

(a) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(b) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(c) Any substance to the extent it is used:

(1) For personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. Present in the same form and concentration as a product packaged for distribution and use by the general public means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public;

(2) In a research laboratory or hospital or other medical facility under the direct supervision of a technically qualified individual; or

(3) In routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

§ 370.14 How do I report mixtures containing hazardous chemicals?

(a) For a mixture containing a hazardous chemical, use the following table to determine if a reporting threshold is equaled or exceeded, and to determine how to report:

If your mixture contains a hazardous chemical	To determine if the threshold level for that hazardous chemical is equaled or exceeded you must	If the threshold level for that hazardous chemical is exceeded then you must
(1) That is an EHS	Determine the total quantity of the EHS present throughout your facility at any one time, by adding together the quantity present as a component in all mixtures and all other quantities of the EHS (you must include the quantity present in a mixture even if you are also counting the quantity of that particular mixture toward the threshold level for that mixture).	Report the EHS component—submit an MSDS for the EHS (or include the EHS on the list of chemicals submitted in lieu of the MSDSs), as provided under § 370.30, and submit Tier I (or Tier II) information for the EHS, as provided under § 370.40 or report the mixture itself—submit an MSDS for the mixture (or include the mixture on the list of chemicals submitted in lieu of the MSDSs), as provided under § 370.30, and submit Tier I (or Tier II) information for the mixture, as provided under § 370.40. If you report the mixture itself, then provide the total quantity of that mixture.
(2) That is not an EHS	Determine either: The total quantity of the hazardous chemical present throughout your facility at any one time by adding together the quantity present as a component in all mixtures and all other quantities of the hazardous chemical (you must include the quantity present in a mixture even if you are also applying that particular mixture as a whole toward the threshold level for that mixture) or the total quantity of that mixture present throughout your facility at any one time.	Report the non-EHS hazardous chemical component—submit an MSDS for the non-EHS hazardous chemical (or include the non-EHS on the list of chemicals submitted in lieu of the MSDSs), as provided under § 370.30, and submit Tier I (or Tier II) information for the non-EHS hazardous chemical as provided under § 370.40 or report the mixture itself—submit an MSDS for the mixture (or include the mixture on the list of chemicals submitted in lieu of MSDSs), as provided under § 370.30, and submit Tier I (or Tier II) information for the mixture, as provided under § 370.40. If you report the mixture itself, then provide the total quantity of that mixture.

(b) For each specific mixture, the reporting option used must be consistent for both MSDS and inventory reporting, unless it is not possible to do so. This means that if you report on a specific mixture as a whole for MSDS reporting, you must report on that mixture as a whole for inventory reporting too (unless it is not possible). MSDS reporting and inventory reporting are discussed in detail in subpart C of this part.

(c) To determine the quantity of an EHS or a non-EHS hazardous chemical component present in a mixture, multiply the concentration of the hazardous chemical component (in weight percent) by the weight of the mixture (in pounds). You do not have to count a hazardous chemical present in a mixture if the concentration is less than or equal to 1%, or less than or equal to 0.1% for a carcinogenic chemical.

Subpart C—Reporting Requirements

§ 370.20 What are the reporting requirements of this part?

The reporting requirements of this part consist of MSDS reporting and inventory reporting. If you are the owner or operator of a facility subject to the reporting requirements of this part then you must comply with both types of reporting requirements. MSDS reporting requirements are addressed in §§ 370.30 through 370.33. Inventory reporting requirements are addressed in §§ 370.40 through 370.45.

How to Comply With MSDS Reporting

§ 370.30 What information must I provide and what format must I use?

(a) You must report the hazardous chemicals present at your facility that meet or exceed the applicable threshold levels (threshold levels are in §1A370.10) by either:

(1) Submitting an MSDS for each hazardous chemical present at your facility that meet or exceed its applicable threshold level; or

(2) Submitting a list of all hazardous chemicals present at your facility at or above the applicable threshold levels. The hazardous chemicals on your list must be grouped by Hazard Category as defined under § 370.66. The list must contain the chemical or common name of each hazardous chemical as provided on the MSDS.

(b) Within 30 days of a request by the LEPC (as provided in § 370.10(b)), you must also submit an MSDS for any hazardous chemical present at your facility for which you have not submitted an MSDS.

§ 370.31 Do I have to update the information?

MSDS reporting stated in § 370.30 is a one-time requirement. However, you must update the information in all of the following ways:

(a) Submit a revised MSDS after you discover significant new information concerning a hazardous chemical for which an MSDS was submitted.

(b) Submit an MSDS, or a list as described in § 370.30(a), for any new hazardous chemical for which you become subject to these reporting requirements.

(c) Submit, as requested by the LEPC, an MSDS for any hazardous chemical present at your facility which you have not already submitted, as provided in § 370.30(b).

§ 370.32 To whom must I submit the information?

(a) You must submit an MSDS or list, as provided in § 370.30(a), to the LEPC, the SERC, and the fire department with jurisdiction over your facility.

(b) You must submit an MSDS requested by the LEPC, as provided in § 370.30(b), to the LEPC.

§ 370.33 When must I submit the information?

(a) You must submit an MSDS or a list, as provided in § 370.30(a), for a hazardous chemical subject to the reporting requirements of this part by October 17, 1987, or within 3 months after you first become subject to the reporting requirements of this part (as provided in §§ 370.30 and 370.31(b)).

(b) You must submit a revised MSDS, as provided in § 370.31(a), within 3 months after discovering significant new information about a hazardous chemical for which an MSDS was submitted.

(c) You must submit an MSDS requested by the LEPC, as provided in §§ 370.30(b) and 370.31(c), within 30 days of receiving the request.

How to Comply With Inventory Reporting

§ 370.40 What information must I provide and what format must I use?

(a) If you are required to comply with the hazardous chemical reporting requirements of this part, then by March 1 every year you must submit inventory information regarding any hazardous chemical present at your facility at any time during the previous calendar year in an amount equal to or in excess of its threshold level. Threshold levels are provided in § 370.10.

(b) Tier I information is the minimum information that you must report to be in compliance with the inventory reporting requirements of this part as described in § 370.41. You may choose to report the Tier II information described in § 370.42 for any hazardous chemical at your facility. You must submit Tier II information to the SERC, LEPC, or fire department having jurisdiction over your facility if they request it. EPA publishes Tier I and Tier II Inventory Forms that provide uniform formats for reporting the Tier I and Tier II information. You may use a State or local format for reporting inventory information if the State or local format contains at least the Tier I information described in § 370.41. EPA's Tier I and Tier II forms are available at *http://www.epa.gov/emergencies.*

Note to paragraph (b):

Some States require Tier II information annually under State law.

(c) You should contact the SERC to determine that State's requirements for inventory reporting formats, procedures, and to obtain inventory forms.

§ 370.41 What is Tier I inventory information?

Tier I information provides State and local officials and the public with information on the general types and locations of hazardous chemicals present at your facility during the previous calendar year. The Tier I information is the minimum information that you must provide to be in compliance with the inventory reporting requirements of this part. If you are reporting Tier I information, you must report aggregate information on hazardous chemicals by hazard categories. There are two health hazard categories and three physical hazard categories for purposes of reporting under this part. These five hazard categories are defined in 40 CFR 370.66. Tier I information includes all of the following:

(a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier I submission is true, accurate, and complete as follows: ''I certify under penalty of law that I have personally examined and am familiar with the information and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.'' This certification shall be accompanied by your full name, official title, signature, date signed, and total number of pages in the submission including all attachments. All other pages must also contain your signature or signature stamp, the date you signed the certification, and the total number of pages in the submission.

(b) The calendar year for the reporting period.

(c) The complete name (and company identifier where appropriate) and address of your facility. Include the full street address or state road, the city, county, State and zip code.

(d) The North American Industry Classification System (NAICS) code for your facility.

(e) The Dun & Bradstreet number of your facility.

(f) The owner's or operator's full name, mailing address, and phone number.

(g) Emergency contact. The name, title, and phone number(s) of at least one local individual or office that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must provide an emergency phone number where such emergency information will be available 24 hours a day, every day.

(h) An indication whether the information being reported is identical to that submitted the previous year.

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each hazard category present at your facility at any time during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(j) An estimate (in ranges) of the average daily amount of hazardous chemicals in each hazard category present at your facility during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(k) The maximum number of days that any single hazardous chemical within each hazard category was present at your facility during the reporting period.

(l) The general location of hazardous chemicals in each hazard category within your facility. For each hazard type, list the locations of all applicable chemicals. As an alternative, you may choose to submit a site plan and list the site coordinates to indicate the locations of the chemicals.

§ 370.42 What is Tier II inventory information?

Tier II information provides State and local officials and the public with specific information on amounts and locations of hazardous chemicals present at your facility during the previous calendar year. If you are reporting Tier II information, you must include:

(a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier II submission is true, accurate, and complete as follows: ''I certify under penalty of law that I have personally examined and am familiar with the information and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.'' This certification must be accompanied by your full name, official title, original signature, date signed, and total number of pages in the submission including all Confidential and Non-Confidential Information Sheets and all attachments. All other pages must also contain your signature or signature stamp, the date you signed the certification, and the total number of pages in the submission.

(b) The calendar year for the reporting period.

(c) The complete name (and company identifier where appropriate) and address of your facility. Include the full street address or state road, the city, county, State and zip code.

(d) The North American Industry Classification System (NAICS) code for your facility.

(e) The Dun & Bradstreet number of your facility.

(f) The owner's or operator's full name, mailing address, and phone number.

(g) Emergency contact. The name, title, and phone number(s) of at least one local individual or office that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must provide an emergency phone number where such emergency information will be available 24 hours a day, every day.

(h) An indication whether the information being reported is identical to that submitted the previous year.

(i) For each hazardous chemical that you are required to report, you must:

(1) Provide the chemical name or the common name of the chemical as provided on the Material Safety Data Sheet and its Chemical Abstract Service (CAS) registry number. If you are withholding the name in accordance with trade secret criteria, you must provide the generic class or category that is structurally descriptive of the chemical and indicate that the name is withheld because of trade secrecy. Trade secret criteria are addressed in § 370.64(a).

(2) Indicate whether the chemical is: pure or mixture; solid, liquid, or gas; and whether the chemical is or contains an EHS.

(3) If the chemical is a mixture containing an EHS, provide the chemical name of each EHS in the mixture.

(4) Indicate which hazard categories apply to the chemical. The five hazard categories are defined in § 370.66.

(5) Provide an estimate (in ranges) of the maximum amount of the hazardous chemical present at your facility on any single day during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(6) Provide an estimate (in ranges) of the average daily amount of the hazardous chemical present at your facility during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(7) The maximum number of days that the hazardous chemical was present at your facility during the preceding calendar year.

(8) Provide a brief description of the precise location of the hazardous chemical at your facility. Alternatively, you may attach a site plan that notes locations, coordinates or a list of site coordinate abbreviations where hazardous chemicals are located.

Under EPCRA section 324, you may choose to withhold from disclosure to the public the location information for a specific chemical. If you choose to withhold the location information from disclosure to the public, you must clearly indicate that the information is ''confidential.'' You must provide the confidential location information on a separate sheet from the other Tier II information (which will be disclosed to the public), and attach the Confidential Location Information Sheet to the other Tier II information. Indicate any attachments you are including.

(9) A brief description of the manner of storage of the hazardous chemical, including container type, temperature and pressure, a description of dikes and other safeguard measures for each location listed. You must use codes that correspond to different storage types and temperature and pressure conditions. The storage codes are in § 370.43. If the specific location for which you are reporting storage conditions is a ''confidential'' location, then you must report the storage conditions on a separate Confidential Location Information Sheet.

§ 370.43 What codes are used to report Tier I and Tier II inventory information?

(a) *Weight range codes.* Except as provided in paragraph (d) of this section, you must use the following codes to report the maximum amount and average daily amount when reporting Tier I or Tier II information:

Range codes	Weight range in pounds	
	From	To
01	0	99
02	100	999
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	More than 1 billion.

Note to paragraph (a): To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

(b) *Storage type codes.* Except as provided in paragraph (d) of this section, you must use the following codes to report storage types when you are reporting Tier II information:

Codes	Types of storage
A	Above ground tank.
B	Below ground tank.
C	Tank inside building.
D	Steel drum.
E	Plastic or non-metallic drum.
F	Can.
G	Carboy.
H	Silo.
I	Fiber drum.
J	Bag.
K	Box.
L	Cylinder.
M	Glass bottles or jugs.
N	Plastic bottles or jugs.
O	Tote bin.
P	Tank wagon.
Q	Rail car.
R	Other.

(c) *Storage condition codes.* Except as provided in paragraph (d) of this section, you must use the following codes to report storage conditions when you are reporting Tier II information:

Codes	Storage conditions
Pressure conditions	
1	Ambient pressure.
2	Greater than ambient pressure.
3.	Less than ambient pressure.
Temperature conditions	
4	Ambient temperature.
5	Greater than ambient temperature.
6	Less than ambient temperature but not cryogenic.
7	Cryogenic conditions.

(d) Your SERC or LEPC may provide other range codes for reporting maximum amounts and average daily amounts, or may require reporting of specific amounts. You may use your SERC's or LEPC's range codes (or specific amounts) provided the ranges are not broader than the ranges in paragraph (a) of this section. Your SERC or LEPC may also provide other codes

for storage types or conditions. You may use those codes provided your SERC's or LEPC's storage types and conditions codes specify the same or more detailed information as the codes in paragraphs (b) and (c) of this section.

§ 370.44 To whom must I submit the inventory information?

You must submit the required inventory information to your SERC, LEPC, and fire department with jurisdiction over your facility.

§ 370.45 When must I submit the inventory information?

(a) You must submit the required inventory information on or before March 1 (beginning in 1988 or beginning after your facility first becomes subject to this part), and on or before by March 1 of each year afterwards. Your submission must contain the required inventory information on hazardous chemicals present at your facility during the preceding calendar year at or above the threshold levels. Threshold levels are in § 370.10. The minimum required inventory information under EPCRA section 312 is Tier I information. Tier I information requirements are described in § 370.41.

(b) You must submit Tier II information within 30 days of the receipt of a request from the SERC, LEPC, or the fire department having jurisdiction over your facility, as provided in § 370.10(b). Tier II information requirements are described in § 370.42.

Subpart D—Community Access to Information

§ 370.60 How does a person obtain MSDS information about a specific facility?

Any person may obtain an MSDS for a specific facility by writing to the LEPC and asking for it.

(a) If the LEPC has the MSDS, it must provide it to the person making the request.

(b) If the LEPC does not have the MSDS, it must request the MSDS from the facility's owner or operator.

§ 370.61 How does a person obtain inventory information about a specific facility?

(a) Any person may request Tier II information for a specific facility by writing to the SERC or the LEPC and asking for such information.

(1) If the SERC or LEPC has the Tier II information, the SERC or LEPC must provide it to the person making the request.

(2) If the SERC or LEPC does not have the Tier II information, it must request it from the facility owner or operator in either of the following cases:

(i) The person making the request is a State or local official acting in his or her official capacity.

(ii) The request is for hazardous chemicals in amounts greater than 10,000 pounds stored at the facility at any time during the previous calendar year.

(3) If the SERC or LEPC does not have the Tier II information, it may request it from the facility owner or operator when neither condition in paragraph (a)(2) of this section is met, but the person's request includes a general statement of need.

(b) A SERC or LEPC must respond to a request for Tier II information under this section within 45 days of receiving such a request.

§ 370.62 What information may a State or local official request from a facility?

The LEPC may ask a facility owner or operator to submit an MSDS for a hazardous chemical present at the facility. The SERC, LEPC, or fire department having jurisdiction over a facility may ask a facility owner or operator to submit Tier II information. The owner or operator must provide the MSDS (unless the owner or operator has already submitted an MSDS to the LEPC for that hazardous chemical) or Tier II information within 30 days of receipt of such request.

§ 370.63 What responsibilities do the SERC and the LEPC have to make request information available?

Under this subpart, the SERC or LEPC must make the following information (except for confidential location information discussed in § 370.64(b)) available if a person requests it:

(a) All information obtained from an owner or operator in response to a request under this subpart.

(b) Any requested Tier II information or MSDS otherwise in possession of the SERC or the LEPC.

§ 370.64 What information can I claim as trade secret or confidential?

(a) *Trade secrets.* You may be able to withhold the name of a specific chemical when submitting MSDS reporting or inventory reporting information if that chemical name is claimed as a trade secret. The requirements for withholding trade secret information are set forth in EPCRA section 322 and implemented in 40 CFR part 350. If you are withholding the name of a specific chemical as a trade secret in accordance with trade secrecy requirements, you must report the generic class or category that is structurally descriptive of the chemical along with all other required information. You must also submit the withheld information to EPA and must adequately substantiate your claim. A Form for substantiating trade secret claims is available at the Agency Web site at *http://www.epa.gov/emergencies.*

(b) *Confidential location information.* You may request that the SERC or the LEPC not disclose to the public the location of any specific chemical required to be submitted in Tier II information. If you make such a request, the SERC or LEPC must not disclose the location of the specific chemical. If you use the Tier II Form to report your inventory information, you can choose to report confidential location information for a specific chemical on the Confidential Location Information Sheet, which must be attached to the other Tier II information you are reporting. Although you may request that location information with respect to a specific chemical be withheld from the public, you may not withhold this information from the SERC, the LEPC, or the local fire department. The Confidential Location Information Sheet is available on the Agency Web site at *http://www.epa.gov/emergencies.*

§ 370.65 Must I allow the local fire department to inspect my facility and must I provide specific location information about hazardous chemicals at my facility?

If you are the owner or operator of a facility that has submitted inventory information under this part, you must comply with the following two requirements upon request by the fire department with jurisdiction over your facility:

(a) You must allow the fire department to conduct an on-site inspection of your facility; and

(b) You must provide the fire department with information about the specific locations of hazardous chemicals at your facility.

§ 370.66 How are key words in this part defined?

Chief Executive Officer of the Tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the Tribe.

Environment includes water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.

EPCRA means the Emergency Planning and Community Right-To-Know Act of 1986.

Extremely hazardous substance (EHS) means a substance listed in Appendices A and B of 40 CFR part 355.

Facility means all buildings, equipment, structures, and other

stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person that controls, is controlled by, or under common control with, such person).

Facility includes manmade structures, as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use.

Hazard category means any of the following:

(1) Immediate (acute) health hazard, including highly toxic, toxic, irritant, sensitizer, corrosive, (as defined under 29 CFR 1910.1200) and other hazardous chemicals that cause an adverse effect to a target organ and which effect usually occurs rapidly as a result of short-term exposure and is of short duration;

(2) Delayed (chronic) health hazard, including carcinogens (as defined under 29 CFR 1910.1200) and other hazardous chemicals that cause an adverse effect to a target organ and which effect generally occurs as a result of long-term exposure and is of long duration;

(3) Fire hazard, including flammable, combustible liquid, pyrophoric, and oxidizer (as defined under 29 CFR 1910.1200);

(4) Sudden release of pressure, including explosive and compressed gas (as defined under 29 CFR 1910.1200); and

(5) Reactive, including unstable reactive, organic peroxide, and water reactive (as defined under 29 CFR 1910.1200).

Hazardous chemical means any hazardous chemical as defined under 29 CFR 1910.1200(c), except that such term does not include:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used:

(i) For personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. Present in the same form and concentration as a product packaged for distribution and use by the general public means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public;

(ii) In a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; or

(iii) In routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Indian Country means Indian country as defined in 18 U.S.C. 1151 as:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Tribe or Tribe means those Tribes federally recognized by the Secretary of the Interior.

Inventory form means the uniform Tier I and Tier II emergency and hazardous chemical inventory forms published by EPA. These forms can be used for reporting inventory information, as described in 40 CFR 370.40 through 370.45.

LEPC means the Local Emergency Planning Committee appointed by the State Emergency Response Commission.

Material Safety Data Sheet or MSDS means the sheet required to be developed under 29 CFR 1910.1200(g).

Mixture means mixture as defined under the Occupational Safety and Health Administration's Hazard Communication Standard in 29 CFR 1910.1200(c).

OSHA means the U.S. Occupational Safety and Health Administration.

Person means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

SERC means the State Emergency Response Commission for the State in which the facility is located except when the facility is located in Indian Country, in which case, SERC means the Emergency Response Commission for the Tribe under whose jurisdiction the facility is located. In the absence of a SERC for a State or an Indian Tribe, the Governor or the chief executive officer of the tribe, respectively, shall be the SERC. Where there is a cooperative agreement between a State and a Tribe, the SERC shall be the entity identified in the agreement.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, any other territory or possession over which the United States has jurisdiction and Indian Country.

Threshold planning quantity (TPQ) means, for a substance listed in Appendices A and B of 40 CFR part 355, the quantity listed in the column ''threshold planning quantity'' for that substance.

[FR Doc. E8–25329 Filed 10–31–08; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
November 3, 2008

Part III

Environmental Protection Agency

Sixty-Third Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0703; FRL–8387–6]

Sixty-Third Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its 63rd Report to the Administrator of the EPA on October 7, 2008. In the 63rd ITC report, which is included with this notice, the ITC is revising the TSCA section 4(e) *Priority Testing List* by removing 1 tungsten compound and 1 High Production Volume (HPV) Challenge Program orphan chemical.

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

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0703, by one of the following methods:

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0703. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0703. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-DOM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

v. If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 260l *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

You may access additional information about the ITC at *http://www.epa.gov/opptintr/itc*.

A. The 63rd ITC Report

The ITC is revising the TSCA section 4(e) *Priority Testing List* by removing 1 tungsten compound and 1 HPV Challenge Program orphan chemical.

B. Status of the Priority Testing List

The *Priority Testing List* includes 2 alkylphenols, 12 lead compounds, 16 chemicals with insufficient dermal absorption rate data, and 207 HPV Challenge Program orphan chemicals.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: October 28, 2008.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Sixty-Third Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency

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Summary

The ITC is revising the Toxic Substances Control Act (TSCA) section 4(e) *Priority Testing List* by removing 1 tungsten compound and 1 High Production Volume (HPV) Challenge Program orphan chemical.

The TSCA section 4(e) *Priority Testing List* is Table 1 of this unit.

TABLE 1—TSCA SECTION 4(E) PRIORITY TESTING LIST (OCTOBER 2008)

ITC Report	Date	Chemical Name/Group	Action
31	January 1993	2 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	10 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	Branched 4-nonylphenol (mixed isomers)	Recommended
41	November 1997	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	Recommended
55	December 2004	203 HPV Challenge Program orphan chemicals	Recommended
56	August 2005	4 HPV Challenge Program orphan chemicals	Recommended
60	May 2007	12 Lead and lead compounds	Recommended

I. Background

The ITC was established by section 4(e) of TSCA ''to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of rules for testing under section 4(a).... At least every six months ..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions'' (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). ITC reports are available from the ITC's website (*http://www.epa.gov/opptintr/itc*) within a few days of submission to the EPA Administrator and from the EPA's website (*http://www.epa.gov/fedrgstr*) after publication in the **Federal Register**. The ITC produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff, ITC members, and their U.S. Government organizations, and contract support provided by EPA. ITC members and staff are listed at the end of this report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Reporting Rules

Following receipt of the ITC's report (and the revised *Priority Testing List*) by the EPA Administrator, EPA's Office of Pollution Prevention and Toxics (OPPT) may add the chemicals from the revised *Priority Testing List* to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) or TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rules. The PAIR rule requires manufacturers (including importers) of chemicals added to the *Priority Testing List* to submit to EPA certain production and exposure information (*http://www.epa.gov/oppt/chemtest/pubs/pairform.pdf*). As provided for in the PAIR rule, whenever EPA announces the receipt of an ITC report, EPA amends, unless otherwise instructed by the ITC, the PAIR rule by adding the recommended (or designated) chemicals that have been added to the *Priority Testing List* by the ITC.

The HaSDR rule requires certain past, current, and proposed manufacturers, importers, and (if specified by EPA) processors of listed chemicals to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or (if specified by EPA) process. As provided for in the HaSDR rule, whenever EPA announces the receipt of an ITC report, EPA amends, unless otherwise instructed by the ITC, the HaSDR rule by adding the recommended (or designated) chemicals that have been added to the *Priority Testing List* by the ITC.

B. ITC's Use of TSCA Section 8 and Other Information

The ITC's use of TSCA section 8 and other information is described in the 52nd ITC Report (*http://www.epa.gov/opptintr/itc*).

III. ITC's Activities During this Reporting Period (June to October 2008)

During this reporting period, the ITC discussed tungsten compounds and HPV Challenge Program orphan chemicals.

IV. Revisions to the TSCA Section 4(e) Priority Testing List: Chemicals Removed From the Priority Testing List

A. Tungsten Compounds

Of the 22 tungsten compounds added to the *Priority Testing List* in the 53rd ITC Report (Ref. 1) and the 56th ITC Report (Ref. 2), 12 were removed in the 58th ITC Report (Ref. 3), 5 were removed in the 59th ITC Report (Ref. 4), and 4 were removed in the 62nd ITC Report (Ref. 5). At this time the ITC is removing tungstate (WO_4^{2-}), disodium, dihydrate, (T-4)-, a.k.a. disodium tungstate (Na_2WO_4) dihydrate (CAS No. 10213–10–2) from the *Priority Testing List* because of the voluntary information provided by the International Tungsten Industry Association and their cooperation in a National Toxicology Program/National Institute for Occupational Safety and Health research program to address exposure and toxicity data needs.

B. HPV Challenge Program Orphan Chemicals

270 HPV Challenge Program orphan chemicals were added to the *Priority Testing List* in the 55th ITC Report (Ref. 6) and 5 were added to the *Priority Testing List* in the 56th ITC Report (Ref. 2).

30 HPV Challenge Program orphan chemicals were removed from the *Priority Testing List* in the 56th ITC Report (Ref. 2). The HPV Challenge Program orphan chemicals that were removed in the 56th ITC Report included ethanol, 2-methoxy- (CAS No. 109–86–4) and tetradecane (CAS No. 629–59–4) that were on the *Priority Testing List* when the 55th ITC Report was sent to the EPA Administrator on December 8, 2004, but removed from *Priority Testing List* before the 55th ITC Report was published in the **Federal Register** because sponsorship of these 2 substances was transferred to the International Council of Chemical Associations HPV Initiative. The HPV Challenge Program orphan chemicals that were removed in the 56th ITC Report also included 11 chemicals that were sponsored before the 55th ITC Report was sent to the EPA Administrator on December 8, 2004 (see Table 6 in the 56th ITC Report) and 17 chemicals that no longer meet the HPV criterion (see Table 7 in the 56th ITC Report).

8 HPV Challenge Program orphan chemicals were removed from the *Priority Testing List* in the 58th ITC Report (Ref. 3) (see Table 2 in the 58th ITC Report). These 8 chemicals included 4 that were on the *Priority Testing List* when the 55th ITC Report was sent to the EPA Administrator on December 8, 2004, but removed from *Priority Testing List* before the 55th ITC Report was published in the **Federal Register**. These 4 chemicals were retained on the December 8, 2004 *Priority Testing List* because sponsorship commitments were received by EPA after December 8, 2004. These 4 chemicals are phosphoric acid, tris(2-ethylhexyl) ester (CAS No. 78–42–2); phosphoric acid, 2-ethylhexyl ester (CAS No. 12645–31–7); 1-propanamine, 3-(tridecyloxy)-, branched (CAS No. 68511–40–0); and hydrocarbons, C_{8-11} (CAS No. 68553–14–0).

35 HPV Challenge Program orphan chemicals were removed from the *Priority Testing List* in the 61st ITC Report (Ref. 7) (see Table 4 in the 61st ITC Report). These 35 chemicals included 1,3-propanediol, 2-amino-2-(hydroxymethyl)- (CAS No. 77–86–1) that was added to the *Priority Testing List* in the 56th ITC Report (Ref. 2).

In this 63rd ITC Report, disulfides, C_{5-12}-alkyl (CAS No. 68513–62–2) are being removed from the *Priority Testing List* because they no longer meet the HPV criterion. Disulfides, C_{5-12}-alkyl were added to the *Priority Testing List* in the 55th ITC Report (Ref. 6).

V. References

1. ITC. Fifty-Third Report of the ITC. **Federal Register** (69 FR 2468, January 15, 2004) (FRL–7335–2). Available online at: *http://www.epa.gov/fedrgstr.*

2. ITC. Fifty-Sixth Report of the ITC. **Federal Register** (70 FR 61520, October 24, 2005) (FRL–7739–9). Available online at: *http://www.epa.gov/fedrgstr.*

3. ITC. Fifty-Eighth Report of the ITC. **Federal Register** (71 FR 39188, July 11, 2006) (FRL–8073–7). Available online at: *http://www.epa.gov/fedrgstr.*

4. ITC. Fifty-Ninth Report of the ITC. **Federal Register** (72 FR 2756, January 22, 2007) (FRL–8110–2). Available online at: *http://www.epa.gov/fedrgstr.*

5. ITC. Sixty-Second Report of the ITC. **Federal Register** (73 FR 27450, May 12, 2008) (FRL–8363–2). Available online at: *http://www.epa.gov/fedrgstr.*

6. ITC. Fifty-Fifth Report of the ITC. **Federal Register** (70 FR 7364, February 11, 2005) (FRL–7692–1). Available online at: *http://www.epa.gov/fedrgstr.*

7. ITC. Sixty-First Report of the ITC. **Federal Register** (73 FR 5080, January 28, 2008) (FRL–8347–1). Available online at: *http://www.epa.gov/fedrgstr.*

VI. The TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmental Quality
Vacant

Department of Commerce

National Institute of Standards and Technology
Dianne Poster, Member, Chair

National Oceanographic and Atmospheric Administration
Tony Pait, Member, Vice-Chair

Environmental Protection Agency
John Schaeffer, Member
Gerry Brown, Alternate

National Cancer Institute
Vacant

National Institute of Environmental Health Sciences
Scott Masten, Alternate

National Institute for Occupational Safety and Health
Dennis W. Lynch, Member
Mark Toraason, Alternate

National Science Foundation
Margaret Cavanaugh, Alternate

Occupational Safety and Health Administration
Thomas Nerad, Member
Maureen Ruskin, Alternate

Liaison Organizations and Their Representatives

Agency for Toxic Substances and Disease Registry
Daphne Moffett, Member
Glenn D. Todd, Alternate

Consumer Product Safety Commission
Jacqueline Ferrante, Member

Department of Agriculture
Clifford P. Rice, Member
Laura L. McConnell, Alternate

Department of Defense
Laurie Roszell, Member

Department of the Interior
Barnett A. Rattner, Member

Food and Drug Administration
Kirk Arvidson, Member
Ronald F. Chanderbhan, Alternate

Technical Support Contractor
Syracuse Research Corporation

ITC Staff
John D. Walker, Director
Carol Savage, Administrative Assistant

TSCA Interagency Testing Committee (7401M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; e-mail address: *savage.carol@epa.gov*; url: *http://www.epa.gov/opptintr/itc.*

[FR Doc. E8–26148 Filed 10–31–08; 8:45 am]

BILLING CODE 6560–50–S

Federal Register

Monday,
November 3, 2008

Part IV

The President

Proclamation 8313—National American Indian Heritage Month, 2008

Proclamation 8314—Diabetes Month, 2008

Federal Register
Vol. 73, No. 213
Monday, November 3, 2008

Presidential Documents

Title 3—

The President

Proclamation 8313 of October 30, 2008

National American Indian Heritage Month, 2008

By the President of the United States of America

A Proclamation

During National American Indian Heritage Month, we celebrate the rich ancestry of American Indians and Alaska Natives and recognize their many contributions to our national story.

Native Americans have enriched our heritage and added to all aspects of our society. Our country is blessed to have their character and strength, and we are especially grateful for the generations of Native Americans who have answered the call to defend our country. During World War II, these brave patriots used their native languages to create an unbreakable oral code. Today, that legacy continues as Native Americans work to advance freedom's cause.

My Administration remains committed to protecting tribal sovereignty and the right to self-determination and to working with tribes on a government-to-government basis. To help more Native Americans realize the dream of home ownership, I signed the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008. For nearly eight years, we have also worked to strengthen educational opportunities for all Americans. In 2004, I issued an executive order to help Native American students fulfill the challenging standards of the No Child Left Behind Act. This order established the Interagency Working Group on American Indian and Alaska Native Education to improve educational programs consistent with tribal traditions, languages, and cultures. By setting high standards for academic achievement, we are enabling more Americans throughout our country to pursue their dreams. During this month, we honor our native peoples and recognize them for strengthening the diversity of our society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2008 as National American Indian Heritage Month. I call upon all Americans to commemorate this month with appropriate programs and activities.

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

[FR Doc. E8–26351
Filed 10–31–08; 11:15 am]
Billing code 3195–W9–P

Federal Register
Vol. 73, No. 213
Monday, November 3, 2008

Presidential Documents

Title 3—

The President

Proclamation 8314 of October 30, 2008

National Diabetes Month, 2008

By the President of the United States of America

A Proclamation

Many Americans, of all ages and backgrounds, are affected by diabetes. National Diabetes Month is an opportunity to inform individuals about the risk factors, prevention, and treatment of this serious disease.

Diabetes is a debilitating disease that results from the body's inability to produce or use insulin effectively. Type 1 diabetes, once known as juvenile diabetes, usually affects children and young adults who are dependant on medication for their lack of insulin. The most common form of diabetes is Type 2 diabetes. Family history and lifestyle risk factors contribute to the possibility of developing Type 2 diabetes. Regular physical activity, healthy eating habits, and consultation with a doctor can help prevent and reduce the effects of this disease.

My Administration is committed to preventing diabetes and finding a cure for this disease. We have provided substantial funding for diabetes education programs and research initiatives. Through the Department of Health and Human Services and other organizations, the National Diabetes Education Program is helping increase awareness among Americans about the risk factors of diabetes and the benefits of making healthy choices. Our Nation must continue to support initiatives that will help turn today's research opportunities into tomorrow's medical success stories.

During National Diabetes Month, we celebrate the medical professionals, researchers, and all those whose time, talents, and energy support the fight against diabetes. Through these efforts and enhanced public awareness of this serious disease, we will work to continue to bring the hope of a healthier future to more Americans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2008 as National Diabetes Month. I call upon all Americans to learn more about the risk factors and symptoms associated with diabetes and to observe this month with appropriate programs and activities.

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

[FR Doc. E8–26355
Filed 10–31–08; 11:15 am]
Billing code 3195–W9–P

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 3, 2008

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AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Addition of Russia and Azerbaijan to the List of Regions Where African Swine Fever Exists; published 11-3-08

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Federal Energy Regulatory Commission

Electronic Tariff Filings; published 10-3-08

Electronic Tariff Filings; Correcting Amendments; published 10-28-08

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Utah; Revised Transportation Conformity Consultation Process, and Approval of Related Revisions; published 9-2-08

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District; published 9-2-08

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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)

Last List October 23, 2008

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CFR CHECKLIST

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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
4	(869–064–00004–1)	13.00	Jan. 1, 2008
5 Parts:			
1–699	(869–064–00005–0)	63.00	Jan. 1, 2008
700–1199	(869–064–00006–8)	53.00	Jan. 1, 2008
1200–End	(869–064–00007–6)	64.00	Jan. 1, 2008
6	(869–064–00008–4)	13.50	Jan. 1, 2008
7 Parts:			
1–26	(869–064–00009–2)	47.00	Jan. 1, 2008
27–52	(869–064–00010–6)	52.00	Jan. 1, 2008
53–209	(869–064–00011–4)	40.00	Jan. 1, 2008
210–299	(869–064–00012–2)	65.00	Jan. 1, 2008
300–399	(869–064–00013–1)	49.00	Jan. 1, 2008
400–699	(869–064–00014–9)	45.00	Jan. 1, 2008
700–899	(869–064–00015–7)	46.00	Jan. 1, 2008
900–999	(869–064–00016–5)	63.00	Jan. 1, 2008
1000–1199	(869–064–00017–3)	22.00	Jan. 1, 2008
1200–1599	(869–064–00018–1)	64.00	Jan. 1, 2008
1600–1899	(869–064–00019–0)	67.00	Jan. 1, 2008
1900–1939	(869–064–00020–3)	31.00	Jan. 1, 2008
1940–1949	(869–064–00021–1)	50.00	Jan. 1, 2008
1950–1999	(869–064–00022–0)	49.00	Jan. 1, 2008
2000–End	(869–064–00023–8)	53.00	Jan. 1, 2008
8	(869–064–00024–6)	66.00	Jan. 1, 2008
9 Parts:			
1–199	(869–064–00025–4)	64.00	Jan. 1, 2008
200–End	(869–064–00026–2)	61.00	Jan. 1, 2008
10 Parts:			
1–50	(869–064–00027–1)	64.00	Jan. 1, 2008
51–199	(869–064–00028–9)	61.00	Jan. 1, 2008
200–499	(869–064–00029–7)	46.00	Jan. 1, 2008
500–End	(869–064–00030–1)	65.00	Jan. 1, 2008
11	(869–064–00031–9)	44.00	Jan. 1, 2008
12 Parts:			
1–199	(869–064–00032–7)	37.00	Jan. 1, 2008
200–219	(869–064–00033–5)	40.00	Jan. 1, 2008
220–299	(869–064–00034–3)	64.00	Jan. 1, 2008
300–499	(869–064–00035–1)	47.00	Jan. 1, 2008
500–599	(869–064–00036–0)	42.00	Jan. 1, 2008
600–899	(869–064–00037–8)	59.00	Jan. 1, 2008
900–End	(869–064–00038–6)	53.00	Jan. 1, 2008
13	(869–064–00039–4)	58.00	Jan. 1, 2008
14 Parts:			
1–59	(869–064–00040–8)	66.00	Jan. 1, 2008
60–139	(869–064–00041–6)	61.00	Jan. 1, 2008
140–199	(869–064–00042–4)	33.00	Jan. 1, 2008
200–1199	(869–064–00043–2)	53.00	Jan. 1, 2008
1200–End	(869–064–00044–1)	48.00	Jan. 1, 2008
15 Parts:			
0–299	(869–064–00045–9)	43.00	Jan. 1, 2008
300–799	(869–064–00046–7)	63.00	Jan. 1, 2008
800–End	(869–064–00047–5)	45.00	Jan. 1, 2008
16 Parts:			
0–999	(869–064–00048–3)	53.00	Jan. 1, 2008
1000–End	(869–064–00049–1)	63.00	Jan. 1, 2008
17 Parts:			
1–199	(869–064–00051–3)	53.00	Apr. 1, 2008
200–239	(869–064–00052–1)	63.00	Apr. 1, 2008
240–End	(869–064–00053–0)	65.00	Apr. 1, 2008
18 Parts:			
1–399	(869–064–00054–8)	65.00	Apr. 1, 2008
400–End	(869–064–00055–6)	29.00	Apr. 1, 2008
19 Parts:			
1–140	(869–064–00056–4)	64.00	Apr. 1, 2008
141–199	(869–064–00057–2)	61.00	Apr. 1, 2008
200–End	(869–064–00058–1)	34.00	Apr. 1, 2008
20 Parts:			
1–399	(869–064–00059–9)	53.00	Apr. 1, 2008
400–499	(869–064–00060–2)	67.00	Apr. 1, 2008
500–End	(869–064–00061–1)	66.00	Apr. 1, 2008
21 Parts:			
1–99	(869–064–00062–9)	43.00	Apr. 1, 2008
100–169	(869–064–00063–7)	52.00	Apr. 1, 2008
170–199	(869–064–00064–5)	53.00	Apr. 1, 2008
200–299	(869–064–00065–3)	20.00	Apr. 1, 2008
300–499	(869–064–00066–1)	33.00	Apr. 1, 2008
500–599	(869–064–00067–0)	50.00	Apr. 1, 2008
600–799	(869–064–00068–8)	20.00	Apr. 1, 2008
800–1299	(869–064–00069–6)	63.00	Apr. 1, 2008
1300–End	(869–064–00070–0)	28.00	Apr. 1, 2008
22 Parts:			
1–299	(869–064–00071–8)	66.00	Apr. 1, 2008
300–End	(869–064–00072–6)	48.00	Apr. 1, 2008
23	(869–064–00073–4)	48.00	Apr. 1, 2008
24 Parts:			
0–199	(869–064–00074–2)	63.00	Apr. 1, 2008
200–499	(869–064–00075–1)	53.00	Apr. 1, 2008
500–699	(869–064–00076–9)	33.00	Apr. 1, 2008
700–1699	(869–064–00077–7)	64.00	Apr. 1, 2008
1700–End	(869–064–00078–5)	33.00	Apr. 1, 2008
25	(869–064–00079–3)	67.00	Apr. 1, 2008
26 Parts:			
§§ 1.0–1–1.60	(869–064–00080–7)	52.00	Apr. 1, 2008
§§ 1.61–1.169	(869–064–00081–5)	66.00	Apr. 1, 2008
§§ 1.170–1.300	(869–064–00082–3)	63.00	Apr. 1, 2008
§§ 1.301–1.400	(869–064–00083–1)	50.00	Apr. 1, 2008
§§ 1.401–1.440	(869–064–00084–0)	59.00	Apr. 1, 2008
§§ 1.441–1.500	(869–064–00085–8)	61.00	Apr. 1, 2008
§§ 1.501–1.640	(869–064–00086–6)	52.00	Apr. 1, 2008
§§ 1.641–1.850	(869–064–00087–4)	64.00	Apr. 1, 2008
§§ 1.851–1.907	(869–064–00088–2)	64.00	Apr. 1, 2008
§§ 1.908–1.1000	(869–064–00089–1)	63.00	Apr. 1, 2008
§§ 1.1001–1.1400	(869–064–00090–4)	64.00	Apr. 1, 2008
§§ 1.1401–1.1550	(869–064–00091–2)	61.00	Apr. 1, 2008
§§ 1.1551–End	(869–064–00092–1)	53.00	Apr. 1, 2008
2–29	(869–064–00093–9)	63.00	Apr. 1, 2008
30–39	(869–064–00094–7)	44.00	Apr. 1, 2008
40–49	(869–064–00095–5)	31.00	[6] Apr. 1, 2008
50–299	(869–064–00096–3)	45.00	Apr. 1, 2008

Title	Stock Number	Price	Revision Date
300–499	(869–064–00097–1)	64.00	Apr. 1, 2008
500–599	(869–064–00098–0)	12.00	[5] Apr. 1, 2008
600–End	(869–064–00099–8)	20.00	Apr. 1, 2008
27 Parts:			
1–39	(869–064–00100–5)	35.00	Apr. 1, 2008
40–399	(869–064–00101–3)	67.00	Apr. 1, 2008
400–End	(869–064–00102–1)	21.00	Apr. 1, 2008
28 Parts:			
0–42	(869–064–00103–0)	64.00	July 1, 2008
43–End	(869–064–00104–8)	63.00	July 1, 2008
29 Parts:			
0–99	(869–064–00105–6)	53.00	July 1, 2008
100–499	(869–062–00106–1)	23.00	July 1, 2007
500–899	(869–062–00107–0)	61.00	[7] July 1, 2007
900–1899	(869–064–00108–1)	39.00	July 1, 2008
1900–1910 (§§ 1900 to 1910.999)	(869–064–00109–9)	64.00	July 1, 2008
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–064–00111–1)	33.00	July 1, 2008
1926	(869–064–00112–9)	53.00	July 1, 2008
1927–End	(869–064–00113–7)	65.00	July 1, 2008
30 Parts:			
1–199	(869–064–00114–5)	60.00	July 1, 2008
200–699	(869–064–00115–3)	53.00	July 1, 2008
700–End	(869–064–00116–1)	61.00	July 1, 2008
31 Parts:			
0–199	(869–064–00117–0)	44.00	July 1, 2008
200–499	(869–064–00118–8)	49.00	July 1, 2008
500–End	(869–064–00119–6)	65.00	July 1, 2008
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–064–00120–0)	64.00	July 1, 2008
191–399	(869–064–00121–8)	66.00	July 1, 2008
400–629	(869–064–00122–6)	53.00	July 1, 2008
630–699	(869–064–00123–4)	40.00	July 1, 2008
700–799	(869–064–00124–2)	49.00	July 1, 2008
800–End	(869–064–00125–1)	50.00	July 1, 2008
33 Parts:			
1–124	(869–064–00126–9)	60.00	July 1, 2008
*125–199	(869–064–00127–7)	61.00	July 1, 2008
200–End	(869–064–00128–5)	60.00	July 1, 2008
34 Parts:			
1–299	(869–064–00129–3)	53.00	July 1, 2008
300–399	(869–064–00130–7)	43.00	July 1, 2008
*400–End & 35	(869–064–00131–5)	64.00	July 1, 2008
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–064–00134–0)	64.00	July 1, 2008
37	(869–064–00135–8)	61.00	July 1, 2008
38 Parts:			
0–17	(869–064–00136–6)	63.00	July 1, 2008
18–End	(869–064–00137–4)	65.00	July 1, 2008
39	(869–064–00138–2)	45.00	July 1, 2008
40 Parts:			
*1–49	(869–064–00139–1)	63.00	July 1, 2008
50–51	(869–064–00140–4)	48.00	July 1, 2008
52 (52.01–52.1018)	(869–064–00141–2)	61.00	July 1, 2008
52 (52.1019–End)	(869–064–00142–1)	67.00	July 1, 2008
53–59	(869–064–00143–9)	34.00	July 1, 2008
60 (60.1–End)	(869–064–00144–7)	61.00	July 1, 2008
60 (Apps)	(869–064–00145–5)	60.00	July 1, 2008
61–62	(869–064–00146–3)	48.00	July 1, 2008
63 (63.1–63.599)	(869–064–00147–1)	61.00	July 1, 2008
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–064–00149–8)	53.00	July 1, 2008
63 (63.1440–63.6175)	(869–064–00150–1)	35.00	July 1, 2008
*63 (63.6580–63.8830)	(869–064–00151–0)	35.00	July 1, 2008
63 (63.8980–End)	(869–064–00152–8)	38.00	July 1, 2008
64–71	(869–064–00153–6)	32.00	July 1, 2008
*72–80	(869–064–00154–4)	65.00	July 1, 2008
81–84	(869–064–00155–2)	53.00	July 1, 2008
85–86 (85–86.599–99)	(869–064–00156–1)	64.00	July 1, 2008
86 (86.600–1–End)	(869–064–00157–9)	53.00	July 1, 2008
87–99	(869–064–00158–7)	63.00	July 1, 2008
100–135	(869–064–00159–5)	48.00	July 1, 2008
136–149	(869–062–00160–6)	61.00	July 1, 2007
*150–189	(869–064–00161–7)	53.00	July 1, 2008
190–259	(869–064–00162–5)	42.00	July 1, 2008
260–265	(869–064–00163–3)	53.00	July 1, 2008
*266–299	(869–064–00164–1)	53.00	July 1, 2008
300–399	(869–064–00165–0)	45.00	July 1, 2008
400–424	(869–064–00166–8)	59.00	July 1, 2008
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–064–00168–4)	64.00	July 1, 2008
790–End	(869–064–00169–2)	64.00	July 1, 2008
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–064–00170–6)	27.00	July 1, 2008
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–064–00172–2)	56.00	July 1, 2008
201–End	(869–064–00173–1)	27.00	July 1, 2008
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[9] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–062–00208–1)	32.00	Oct. 1, 2007
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[8] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
200–599	(869–062–00221–1)	45.00	Oct. 1, 2007
600–659	(869–062–00222–0)	31.00	Oct. 1, 2007
660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
CFR Index and Findings Aids	(869–064–00050–5)	65.00	Jan. 1, 2008
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Microfiche CFR Edition:			
Subscription (mailed as issued)		406.00	2008
Individual copies		4.00	2008
Complete set (one-time mailing)		332.00	2007
Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 2008

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
November 3	Nov 18	Dec 3	Dec 18	Jan 2	Feb 2
November 4	Nov 19	Dec 4	Dec 19	Jan 5	Feb 2
November 5	Nov 20	Dec 5	Dec 22	Jan 5	Feb 3
November 6	Nov 21	Dec 8	Dec 22	Jan 5	Feb 4
November 7	Nov 24	Dec 8	Dec 22	Jan 6	Feb 5
November 10	Nov 25	Dec 10	Dec 26	Jan 9	Feb 9
November 12	Nov 28	Dec 12	Dec 29	Jan 12	Feb 10
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November 20	Dec 5	Dec 22	Jan 5	Jan 20	Feb 18
November 21	Dec 8	Dec 22	Jan 5	Jan 20	Feb 19
November 24	Dec 9	Dec 24	Jan 8	Jan 23	Feb 23
November 25	Dec 10	Dec 26	Jan 9	Jan 26	Feb 23
November 26	Dec 11	Dec 26	Jan 12	Jan 26	Feb 24
November 28	Dec 15	Dec 29	Jan 12	Jan 27	Feb 26